

**APPENDIX**  
**Volume I**

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**Supreme Court of the United States**

**OCTOBER TERM, 1968**

**No. 624**

**CLYDE A. PERKINS, *Petitioner,***

**v.**

**STANDARD OIL COMPANY OF CALIFORNIA, *Respondent.***

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE NINTH CIRCUIT**

**PETITION FOR WRIT OF CERTIORARI FILED OCTOBER 3, 1968  
CERTIORARI GRANTED JANUARY 14, 1969**

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OF APPEALS FOR THE NINTH CIRCUIT

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## APPENDIX

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### I. Relevant Docket Entries

Date                      Proceedings

1959                      [United States District Court for the Western  
District of Washington, Northern Division]

Mar. 2—Filed Complaint with Demand for Jury Trial.

.                      .                      .

Sept. 22—Mailed original file with certified copy of order  
for transfer to Clerk, U.S. District Court, Portland,  
Oregon.

[United States District Court for the District of  
Oregon]

Sept. 23—Received and Filed record from Western Dis-  
trict of Washington, Northern Division.

.                      .                      .

1960

Jan. 11—Record of hearing on deft's Motion to dismiss and  
on Pltf's motion for leave to join Lee Powell, Harris  
Oil Company and Harris Distributing Company as par-  
ties plaintiff; Entered Order taking under advisement.

Feb. 29—Record of Opinion; Entered Order that same be  
filed (Civil 70-59)

.                      .                      .

Mar. 18—Filed Deft's Motion to strike amended complaint,  
or, in the alternative, to dismiss.

.                      .                      .

Apr. 4—Entered order allowing pltf to file amended com-  
plaint.

.                      .                      .

Apr. 4—Filed Amended Complaint, adding defts Harris Oil Company, a corp., Harris Distributing Company, a corporation and Lee Powell, and demand for jury trial.

Apr. 13—Filed and entered order that deft. Standard Oil Co. of Calif. have to and including April 23, 1960 within which to answer (on stipulation).

Apr. 22—Filed Answer of deft. Standard Oil Co. of Calif. to amended complaint.

May 12—Filed answer of deft. Lee Powell to amended complaint.

May 20—Filed answer of defts. Harris Oil Co. and Harris Distributing Co. to amended complaint.

1961

May 18—Filed pltf's motion for permission to file amended complaint, joining Perkins Oil Co. of Wash. and Perkins Oil Co. of Oregon as additional party pltf.

June 11—Entered order allowing motion to file amended complaint and pltf's counsel to file amended complaint within 10 days.

June 25—Filed Second Amended Complaint and Request for Jury Trial.

July 3—Filed motion of deft. Standard Oil Co. of Calif. to dismiss.



1962

July 9—Filed Answer of deft. Standard Oil Co. of Calif. to second amended complaint.

Aug. 7—Filed and Entered Order dated August 6, 1962, dismissing second amended complaint of plaintiffs Perkins Oil Company of Oregon, and Perkins Oil Company of Washington.

Oct. 22—Entered order allowing motion to file amended complaint.

Nov. 26—Filed order permitting pltf. to file an amended complaint (microfilmed 10/31/62).

Dec. 7—Filed third amended complaint and request for jury trial.

Dec. 17—Filed motion of deft. Standard Oil Co. of Calif. to dismiss the third amended complaint and the second cause of action therein or, in the alternative for an order striking the same.

1963

Feb. 6—Filed and entered order dismissing second cause of action contained in pltf's third amended complaint, further, that deft. Standard Oil Co. have 15 days from date hereof within which to answer the 1st cause of action contained in third amended complaint.

Mar. 14—Filed fourth amended complaint and request for jury trial.

Mar. 21—Filed Motion of deft. Standard Oil Co. of Calif. to dismiss the Fourth amended complaint and the second cause of action therein, or, in the alternative for an order striking the same.

Apr. 10—Filed and entered Memorandum Order dismissing pltf's second cause of action and his fourth amended complaint without leave to further plead.

June 17—Record of Pretrial Conf.

June 21—Record of defts' motion for a 6 months continuance; entered order denying motion.

July 10—Record of pretrial conf.

July 15—Record of Jury Trial; jury empanelled and sworn.

Aug. 8—Entered Order granting Defts. renewed Motion for mistrial. Entered Order discharging jury from further consideration of case. Entered Order setting for retrial Monday, October 21, 1963.

Aug. 13—Entered Order that Pretrial Conference upon Original and supplemental contentions is set for Friday, Oct. 18th at 9:00 a.m.

Oct. 17—Filed Notice of Appearance of the firm of Bonyhadi & Hall as counsel for pltf.

Oct. 18—Entered order resetting trial of Oct. 28, 1963 to Nov. 5, 1963.

Nov. 4—Record of jury trial.

Nov. 4—Record of pretrial conf.

Dec. 17—Record of deft's motion for directed verdict; entered order denying motion.

Dec. 20—Record of Verdicts in favor of pltf. in the amt. of \$336,404.57, special verdict and special interrogatories.

Dec. 20—Entered order that the Verdict be tripled under the law.

Dec. 20—Filed GENERAL VERDICT for pltf. against deft. Standard Oil Co. of Calif. in the amt. of \$336,404.57.

Dec. 20—Filed SPECIAL VERDICTS FOR PLTF. against the deft. Standard Oil Co. of Calif. in the amt. of \$336,404.57.

Dec. 20—Filed SPECIAL INTERROGATORIES TO THE JURY.

Dec. 20—Entered JUDGMENT for pltf. against Standard Oil Co. of Calif. for the sum of One Million Nine Thousand Two Hundred Thirteen and 71/100 Dollars, together with costs; it is further ordered that issue of award of reasonable atty's fees for the pltf. in this cause is segregated and reserved for further order.

Dec. 23—Filed Judgment for pltf. against Standard Oil Co. of Calif. for the sum of \$1,009,213.71 together with costs; it is further ordered that issue of award of reasonable atty's fees for the pltf. in this cause is segregated and reserved for further order.

1964

Jan. 2—Entered order staying judgment.



Apr. 3—Filed and entered order denying deft's motions for new trial and judgment notwithstanding the verdict.

Apr. 24—Filed Notice of Appeal by defendant Standard Oil Company (served).

May 18—Filed and entered award of \$289,000 as reasonable attys' fees for pltf. to be paid by deft.

May 25—Entered order allowing and denying certain items in cost bill.

May 28—Filed notice of appeal by deft. Standard Oil Co. of Calif.—served.

June 8—Filed and entered order allowing costs incurred in connection with litigation in amt. of \$2,568.21 and further that the objections lodged by deft. Standard with respect to all remaining items of costs claimed by pltf. are sustained (entered in lien docket Vol. 5, Page 195).

July 20—Mailed clerk's record 6 volumes (original only) to Court of Appeals. All exhibits and seven (7) boxes of reporter's transcripts of proceedings (originals and two copies) picked up by O'Neill Transfer Company for packing and shipping.

[United States Court of Appeals for the Ninth Circuit]

1965

Feb. 5—Filed app & order (C) ext time to Feb. 23, file appellants brief; etc.

Feb. 18—FILED 20 PRINTED APPELLANTS BRIEF, entd. app of counsel.

Apr. 23—FILED 20 PRINTED BRIEF OF THE APPELLEE PERKINS, entd. app.

June 1—FILED 20 REPLY BRIEF FOR APPELLANT.

June 8—CAUSE ARG. TO K & D AND UPON STIP. SUBMITTED TO H K & D.

1967

Nov. 2—ORDERED OPINION (KOELSCH) FILED & JUDG. FILED & ENT. ACCD'L.

Nov. 2—Filed opinion. Judg. of DC Rev. & cause remd. for a new trial.

Nov. 2—Filed & ent. judgment.

1968

Jan. 31—Recvd. orig. & 3 of appellees alternative motion for clarification.

Jan. 31—FILED 20 OF APPELLEES PETITION FOR REHEARING.

May 13—FILED 20 OF APPELLANTS RESPONSE TO PETITION FOR REHEARING

June 3—FILED 20 ANSWER OF APPELLEE TO RESPONSE TO PETITION FOR REHEARING.

July 9—Filed order (H K & D) denying petition of appellee for rehearing.

July 9—Filed order (H K & D) amending opinion in response to appellee motion for clarification.

**II. Pleadings**

---

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

CLYDE PERKINS, *Plaintiff,*

v.

STANDARD OIL COMPANY OF CALIFORNIA, a corporation;  
HARRIS OIL COMPANY, a corporation; HARRIS DISTRIBUTING COMPANY, a corporation; and LEE POWELL,  
*Defendants.*

**A. Fourth Amended Complaint and Request for Jury Trial**

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS, plaintiff complains and alleges as follows:

**I**

**JURISDICTION**

Jurisdiction is founded upon the Clayton Act (38 Stat 730, Oct. 15, 1914, Ch. 323, Title 15 U.S.C. § 13), as amended by the Robinson-Patman Act (June 19, 1936, Ch. 592, § 1, 49 Stat 1526) and other amendments, and upon 15 U.S.C. § 15 and 28 U.S.C. § 1331.

**II**

**VENUE**

Venue is founded on U.S.C. Title 28, § 1391, and the fact that defendants Standard Oil Company of California, Harris Oil Company and Harris Distributing Company are corporations licensed and doing business within this Judicial District.

## III

## PARTIES

A. Plaintiff, Clyde Perkins, is an individual citizen and inhabitant of the State of Washington who for many years was a jobber of defendant Standard Oil's petroleum products in portions of Oregon and Washington, pursuant to a written contract executed by plaintiff, Clyde Perkins, and defendant.

B. Defendant Standard Oil Company of California is a corporation, organized and existing under the laws of the State of Delaware, which maintains offices and places of business within this state and Judicial District.

C. Defendant Lee Powell is a citizen and resident of the State of Washington, with his office and place of business in the State of Oregon, and engaged in the doing of his business within Oregon and Washington.

D. Defendants Harris Oil Company and Harris Distributing Company are Oregon corporations, engaged in the doing of their business in Oregon and Washington.

## IV

## DEFINITIONS

The term "Defendant" as used in this complaint shall include all subsidiaries and other affiliated companies which it controls or operates. It shall also include all acts committed by its employees, servants, agents or representatives acting within the scope of their employment for defendant.

## V

## AGREEMENTS

On or about March 9, 1945, an agreement was reached between defendant Standard Oil Company of California, Inc. and plaintiff, Clyde Perkins, and two other jobbers,

under which plaintiff, Clyde Perkins, and two others became jobbers for the distribution of its petroleum products in portions of Oregon and Washington in the manner provided therein. A true copy of this agreement was attached to the original complaint and by reference is made a part of this complaint as though fully set forth herein. It was contemplated by the parties that these three jobbers would in turn subdivide the areas into specified regions between themselves, and such an agreement was achieved. A true copy of this allocation was attached to the original complaint and by reference is made a part of this complaint as though fully set forth herein. Similar agreements were executed in 1953 and 1956 between plaintiff, Clyde Perkins, and defendant Standard Oil, and two other jobbers, and similar allocations made between the jobbers.

## VI

### COMMERCE

Defendant Standard Oil Company of California, Inc. is the largest manufacturer of petroleum products on the Pacific Coast, with extensive investments in refineries, pipe lines, shipping, plants, retail outlets throughout the Pacific Coast. Petroleum products are produced and obtained in California and other foreign and domestic locations and are transported to the defendant's refineries, frequently in its own pipe lines or in trucks or tankers, where it is then refined and shipped to other states by means of tankers, trucks, pipe lines and other methods of conveyance, including extensive shipments to the State of Washington. Frequently it is stored in its bulk plants for comparatively short periods of time. It is then delivered to its jobber or retail outlets, or it is sold directly to consumers. Defendant owns a large number of retail outlets and these retail outlets make sales directly to consumers. That the production, refining, shipment, temporary storage, delivery and sales to consumers are all



in the stream of interstate commerce and are mere conduits for the eventual delivery and sale of its products to consumers. Shipments of its products to plaintiff, Clyde Perkins, were in fulfillment of the terms and conditions of the various contracts signed between plaintiff, Clyde Perkins, and defendant Standard Oil, which obliged the plaintiff, Clyde Perkins, to use his best efforts to purchase the quotas designated therein. Delivery of products to plaintiff, Clyde Perkins, by defendant Standard Oil was a continuous, regular and relatively uninterrupted and uniform delivery and within the stream of interstate commerce during the period of the agreements referred to, and it was intended that its petroleum products would eventually be delivered to gas service stations and other outlets within the states of Washington and Oregon. Plaintiff was a comparatively large jobber and under the agreements executed in 1956, it was provided that plaintiff and the other two jobbers designated therein would use their best efforts to sell products in the following amounts:

S. O. Jobber, gasoline, first brand	8,000,000
S. O. Jobber, gasoline, second brand	12,000,000
S. O. Jobber, kerosene	100,000
S. O. Jobber, stove oil	6,000,000
S. O. Jobber, furnace oil	9,000,000
S. O. Jobber, Diesel fuel	6,000,000
S. O. Jobber, automotive Diesel fuel	100,000

with an automatic adjustment on the first day of each ensuing contract year on the basis of 110% of Jobber's actual replacement deliveries during the preceding contract year.

All purchases of petroleum products within the period of this agreement were made by plaintiff directly from defendant Standard Oil and in the stream of interstate commerce. That said purchases and deliveries directly

affect the total volume of petroleum products shipped into the States of Washington and Oregon, and affect, alter and modify the total volumes shipped and delivered in interstate commerce.

## VII

### UNLAWFUL DISCRIMINATION

Commencing approximately March 1, 1955, the exact date being unknown to the plaintiff, Clyde Perkins, and within the knowledge of defendant Standard Oil, and continuing thereafter up to the end of the contract, August 31, 1958, defendant Standard Oil unlawfully discriminated against plaintiff in the course of interstate commerce in the sale of its petroleum commodities of like grade and quality by granting discounts, allowances, payments, services, facilities, rebates and lower prices to other purchasers who were engaged in direct competition with plaintiff and sold its products to such purchasers on more favorable terms than it sold to plaintiff, and these favorable prices, payments, services, facilities, allowances, discounts and things of value were not made available to plaintiff. Such discriminatory purchases were made in interstate commerce, and the commodities were sold for use, consumption and resale within the United States.

## VIII

### EFFECT OF DISCRIMINATIONS

As a direct and proximate result of these acts of discrimination, plaintiff has sustained a severe and substantial loss of his retail customers and a severe and substantial loss in income and profits, and it was extremely difficult to compete with other jobbers, distributors and retailers who were recipients of the unlawful discrimination. The effect of these discriminations was to substantially lessen competition within this industry and to injure, destroy and prevent plaintiff from competing with

other jobbers and distributors similarly situated. The unjust and unlawful differentials referred to were not attributable to differences in the cost of manufacture, sales or delivery.

## IX

### DAMAGES

As a direct and proximate result of said acts and discriminations referred to above, plaintiff, Clyde Perkins, has been damaged to the extent of approximately One Hundred Ninety-three Thousand One Hundred Six Dollars and Sixty-three Cents (\$193,106.63), which represents the amount of allowances, rebates, facilities, services, lower prices, discounts and payments he would have received had plaintiff been treated in the same fashion as other competitors of like grade and quality, and has suffered a further loss of approximately Four Hundred Twelve Thousand Thirty-four Dollars and Seventy-six Cents (\$412,034.76) in lost profits representing additional products which he was unable to sell because of said acts and discriminations. That the exact amount of the discriminatory allowances, rebates, lower prices, discounts and payments given to competitors and not extended to plaintiff is within the knowledge of defendant Standard Oil. Plaintiff requests the right to amend this complaint in accordance with the facts as they develop. That the above amounts should be trebled as provided by law, making a total of One Million Eight Hundred Fifteen Thousand Four Hundred Twenty-four Dollars and Seventeen Cents (\$1,815,424.17).

## X

### ATTORNEYS' FEES

That as a direct result of the acts of discrimination referred to above by defendant Standard Oil, plaintiff has been obliged to employ the undersigned attorneys for the

purpose of bringing this action and the sum of One Hundred Thousand Dollars (\$100,000.00) is a reasonable sum to be awarded to plaintiff as and for reasonable attorneys' fees incurred herein.

## XI

### INTERESTS OF OTHER DEFENDANTS

Lee Powell, Harris Oil Company and Harris Distributing Company have certain rights under the contracts as aforesaid to the extent set forth in said agreements, but said parties decline to bring this action because they are presently doing business with defendant Standard Oil Company of California, Inc.

• • • • •  
FOR A SECOND AND FURTHER CAUSE OF ACTION AGAINST DEFENDANTS, plaintiff complains and alleges as follows:

## I

Plaintiff repeats and realleges all of the allegations and averments contained in paragraphs II, III, IV, V and XI of his first cause of action herein, as though fully set forth.

## II

### JURISDICTION

Jurisdiction is founded upon the Sherman Antitrust Act, Ch. 647, 26 Stat 209, July 2, 1890, Title 15 U.S.C. § 1-8, and upon subsequent amendments thereto.

## III

### STANDARD OIL COMPANY OF CALIFORNIA

Standard Oil Company of California is one of the largest integrated petroleum organizations in the world, engaging in all phases of petroleum activities. In the Western Hemisphere it presently maintains in excess of

23,000 retail service stations and in excess of 1800 wholesale plants. It is presently the fifth largest domestic refining company, with refinery runs in excess of 331,359,000 barrels. It also has proven crude oil and natural gas liquid reserves estimated in excess of 18,319,000,000 barrels. It also owns or has substantial interest in 32 natural gasoline and cycling plants and natural gas reserves in excess of 7,000,000,000 cubic feet. It presently maintains refineries at Richmond, California; El Segundo, California; Bakersfield, California; El Paso, Texas; Salt Lake City, Utah; Perth Amboy, New Jersey; Baltimore, Maryland; Cincinnati, Ohio; Mobile, Alabama; St. Johns, New Brunswick; Portland, Oregon; Vancouver, British Columbia; Honolulu, Hawaii; and Lake Maracaibo, Venezuela, with a daily capacity in excess of 700,000 barrels. It holds under lease in excess of 100,000,000 acres, with leases in the United States, Canada, Venezuela, Guatemala, Bolivia, Trinidad, the Bahamas, Colombia, Jamaica, Libya, the Philippines, Turkey, Norway, Nigeria, French Sahara, Spain, Spanish Sahara and Western Australia. At the present time Standard has more than 10,000 producing oil wells in the United States alone, with the bulk of these concentrated in either California, Louisiana, or Texas. Standard operates not only under its own name, but by and through various wholly owned subsidiaries. That some of its wholly owned subsidiaries are as follows:

Standard Oil Company of California; Western Operations, Inc.; American Bitumals & Asphalt Company; California Chemical Company; California Commercial Company; California Oil Company; The California Company; Standard Oil Company of Texas; California Research Corporation; California Shipping Company; California Tanker Company; Cal-Ky Pipe Line Company; Chevron Oil Company; Lomita Gasoline Company; Pacific Oil Company; Pasotex Pipe Line Company; Salt Lake Pipe Line Company; Standard Oil Company (Kentucky); Standard Pipe Line Company; Standard Stations, Inc.; Canadian



Bitumals Company Limited; Standard Oil Company of British Columbia Limited; The California Standard Company; Bolivia California Petroleum Company; California Exploration Company; Compania Guatemala California De Petroleo; Compania Petrolera California Companies; Richmond Exploration Company; Richmond Petroleum Company of Colombia; Bahama California Oil Company; Bahama California Oil Company Limited; Compania Petrolera California, Inc.; Dominion Oil Limited; Iran California Oil Company; California Asiatic Oil Company; California Chemical International, Inc.; California Crude Sales Company; California Transport Corporation; International Bitumen Emulsions Corporation; California Commercial Company; Salt Lake Pipe Line Co.; Bahrain Petroleum Company.

In addition, together with Texaco, Standard holds a fifty percent interest in the Caltex group of companies, which companies are engaged in exploration, production, refining, marketing and transportation in more than seventy countries, and which itself employs in excess of 40,000 persons. Caltex owns or has an interest in more than seventeen refineries in twelve countries and maintains one of the largest tanker fleets in the world. Caltex presently owns in excess of sixty vessels, and is operating an additional number of approximately the same size under charter. Standard also, together with Standard Oil of New Jersey, Standard Oil of New York, and Texaco, owns the Arabian American Oil Company which has a daily production in excess of 1,000,000 barrels per day, and which holds a concession in excess of 200,000,000 acres in Saudi Arabia. Arabian American Oil Company is engaged in the exploration, production, refining and sale of crude oil and products, with a daily production in excess of 1,000,000 barrels.

Through a subsidiary, Standard also holds a seven percent interest in the Iranian oil consortium, one of the

largest sources of crude oil in the world. Numerous other major domestic petroleum companies have a proprietary interest in the Iranian consortium. Standard also owns 63.64% of the Huntington Beach Company, which company owns land in the Huntington Beach area in California, consisting primarily of property which is leased for petroleum production, and from which substantial products are obtained. The balance of the stock in Huntington Beach Oil Company is owned by Signal Oil & Gas Company.

In addition, in its own right, defendant Standard owns in excess of eighteen tankers and operates others under charter, which vessels are engaged primarily in transporting crude oil from California terminals to refineries on the Pacific Coast, and from terminals on the Gulf Coast, and in South America to refineries on the East Coast or inter-coastal, and from California refineries to terminals on the Pacific Coast, Central America, Alaska, Hawaii, and to the Mid-Pacific. In addition, Standard maintains a foreign sea-going fleet of approximately ten tankers, which it or one of its subsidiaries owns, and charters approximately twenty more. Standard also has approximately 2,000 miles of oil pipe lines, with the largest carrying petroleum products from Salt Lake into the Spokane, Washington, area.

Standard maintains extensive harbor facilities along the Pacific Coast, Hawaii and Alaska for the loading and unloading of crude oil and products, with facilities in Portland and Seattle, among other areas. Standard Oil Company of California was initially organized in 1926, succeeding to the business of Standard Oil Company and Pacific Oil Company. Throughout its corporate history, defendant Standard Oil Company of California has followed an aggressive and expansionist policy, and except for periods of economic maladjustment, has steadily increased its production, sales, holdings and assets in all phases of the petroleum industry in an effort to achieve maximum growth. Standard has been particularly aggressive in the seven

Western states, consisting of California, Oregon, Washington, Nevada, Idaho, Arizona and Utah, and at the present time is the largest single marketer in virtually all phases of the petroleum industry in that section. In recent years, Standard has increased its sales to more than twenty percent of the overall gallonage sold in each of these states. In an effort to further its expansionist design, it acquired in 1947 all retail outlets owned by the Signal Oil and Gas Company which operate under the name "Signal". However, Standard declined to change the name under which the Signal stations sold their products in an effort to take advantage of the Signal tradename, and in a further effort to capture potential buyers of petroleum products, who for one reason or another declined to patronize the Standard stations. Standard also markets its products through numerous retail outlets which have the appearance of independent stations. In many cases Standard insists that there be no indication that the products are Standard products. Recently, Standard Oil Company has acquired all marketing facilities and all other facilities of Standard Oil Company of Kentucky, which company had previously been the leading marketer in Alabama, Florida, Georgia, Kentucky and Mississippi. As a result of this last acquisition, Standard acquired additional crude oil reserves, production and marketing and marine facilities of all types. Standard has expanded its interests into the petro-chemical field with sales in 1961 in excess of \$150,000,000.00.

Standard is also a joint owner of the Irving Oil Company, which company markets its products in more than 3,000 retail outlets, again without indication that the products are those of Standard Oil.

Standard also cooperates with numerous other major oil companies in conducting exploratory work throughout the world and also exchanges products with them to a considerable degree. For example, Standard has a 50-50 agreement with Richfield Oil Company for an 834,000 acre development

in Kenai Basin, Alaska. Both Cities Service Company and Sinclair Oil Corporation have extensive stock ownerships in Richfield Oil Corporation. Neither of the latter companies have seen fit to enter into competition to any material degree in the Pacific Northwest in competition with Richfield, or for that matter with Standard in the same region.

#### IV

##### CO-CONSPIRATORS

Whenever the term "co-conspirator" is used in this complaint, it shall refer to the following corporations:

Standard Oil Company of California; Standard Stations, Inc.; Huntington Beach Company; Standard Oil Company of California Western Operations, Inc.; and other corporations whose names are not presently known to plaintiff.

#### V

##### COMMERCE

Defendant Standard Oil Company of California obtains its crude oil from sources throughout the world, including Arabia, Iran, Venezuela, Sumatra, Bahrain Island, Gulf of Mexico, California, and many other states and countries. The products thus obtained are transported to the defendant's refinery—in many cases frequently by its own pipe lines or in trucks or tankers which are owned, leased or chartered by defendant Standard. These refineries are located throughout the world. Virtually all of these refineries are located outside the States of Oregon and Washington, with the exception of a small refinery located in Portland, Oregon, having a capacity of only 7,000 barrels a day, and engaged primarily in refining asphalt, and a chemical plant in Kennewick, Washington. Frequently the products thus obtained from outside the States of Oregon and Washington are stored in bulk plants maintained by



defendant Standard for comparatively short periods of time. From these locations it is delivered to jobber and retail outlets, many of which are owned by defendant Standard and these retail outlets in turn make sales directly to consumers. The production, refining, shipment, temporary storage, delivery and sales to consumers are all in the stream of interstate commerce and are mere conduits for the eventual delivery and sale of its products to consumers. Shipments of its products to plaintiff, Clyde Perkins, were in fulfillment of the terms and conditions of various contracts signed between plaintiff, Clyde Perkins, and defendant Standard Oil, which obliged plaintiff, Clyde Perkins, to use his best efforts to purchase the quantities designated therein. Delivery of products to plaintiff, Clyde Perkins, by defendant Standard was a continuous, regular and relatively uninterrupted and uniform delivery and within the stream of interstate commerce during the period referred to in this complaint, and it was intended that its petroleum products would eventually be delivered to service stations and other outlets within the States of Oregon and Washington.

## VI

### CONSPIRACY TO MONOPOLIZE AND RESTRAIN

Commencing approximately in 1955, the exact date being unknown to plaintiff, Clyde Perkins, and within the knowledge of defendant Standard Oil, and continuing thereafter up to the end of the contract, August 31, 1958, between plaintiff and Standard Oil Company of California, the defendant Standard and co-conspirators named herein, together with other persons and corporations and companies unknown to plaintiff, have acted concertedly together through agreement, understanding and control, and in certain cases tacitly, and pursuant thereto have mutually adopted and conducted their businesses in accordance with common plans and programs, which defendant and each co-conspira-



tor has adopted in order to accomplish the following purposes and objectives, among others:

(a) Control and regulate prices, and to substantially eliminate competition, and to restrain trade;

(b) Monopolize, control and channelize distribution of petroleum products in interstate commerce, limit the type of business which might be engaged in by independent jobber and retail distributors, and to eliminate and control competition, and potential competitors, and in so doing, to attempt to monopolize;

(c) To arbitrarily, unlawfully, unreasonably and knowingly raise, fix, control, set, stabilize and affect the price of petroleum products shipped in interstate commerce within the United States and in particular within Oregon and Washington;

(d) To arbitrarily, unlawfully, unreasonably and knowingly prevent, suppress and eliminate competition between itself and other potential and actual competitors in the sale of petroleum products;

(e) To arbitrarily, unlawfully, unreasonably and knowingly prevent, suppress and eliminate competition from any source in the sale of petroleum products within the States of Oregon and Washington;

(f) To establish and maintain unreasonably high, excessive, monopolistic and noncompetitive prices for petroleum products shipped in interstate commerce as aforesaid into the States of Oregon and Washington.

## VII

### ACTIVITIES IN FURTHERANCE OF PLANS

To further the objectives of said conspiracy, defendant Standard, and the other co-conspirators, among other activities, have:

(1) Systematically attempted to destroy the business of plaintiff, Clyde Perkins;

(2) Set up competing jobbers in the same area in which plaintiff operated despite their assurances this would not be done;

(3) Systematically discriminated with respect to price, terms, service, facilities, charges, allowances, payments, rebates, and discounts to other accounts who were in competition with plaintiff;

(4) Coerced plaintiff into reselling the commodities obtained from defendant Standard at prices which were dictated by Standard;

(5) Professed there were shortages of material and other supplies, but at the same time making it available to other competitors, and in certain cases making it available to outlets maintained, leased, or otherwise serviced by defendant Standard itself;

(6) Refused to permit plaintiff to expand into other areas;

(7) Refused to permit plaintiff to make sales in many instances within the territory which had been allocated by Standard to plaintiff;

(8) Refused to assist plaintiff during intervals of so-called price wars, while at the same time assisting competing accounts and assisting retail stations which Standard supplied directly;

(9) Appropriated customers which had been built up by plaintiff, Perkins, many times after considerable expense had been incurred by plaintiff;

(10) Required plaintiff to cease and desist from supplying certain accounts in an effort to appropriate business for itself, or in certain cases, making it available to favored competitors;

(11) Insisted that plaintiff drop certain other products which he was selling and which he obtained from other sources;

(12) Refused to sell products to plaintiff in certain instances, except upon the condition he purchase other products;

(13) Discouraged and prohibited plaintiff from taking on certain customers, even though said customers were within the area which had been established by the defendant;

(14) Extended subsidies and allowances to other competitors of plaintiff, while refusing the same sort of allowance or subsidy to plaintiff, Perkins;

(15) Adopted a policy of protecting some of its customers from competition, while refusing to extend the same sort of protection and insulation to plaintiff, Perkins;

(16) Bidded against plaintiff, Perkins, on many occasions;

(17) Granted additional territory to many competitors of plaintiff, but refusing to grant additional territory to plaintiff, and in many cases taking territory away from plaintiff without compensation;

(18) Made facilities available to favored competitors of plaintiff and permitted certain types of accounts to draw from numerous locations, thereby saving additional costs;

(19) Given long-term allowances in many cases to competitors of plaintiff, while at the same time making similar allowances only on a day-to-day basis to plaintiff, thereby making it difficult to compete with competitors receiving adjustments for a longer period;

(20) Leased certain facilities to jobbers similarly situated at nominal rates, but failed and refused to extend similar facilities to plaintiff;

(21) Lowered the percentage of margins which were available to plaintiff, with the knowledge the reduced margin would make it difficult, if not impossible, for him to continue in business;

(22) Created conditions which made it impossible economically for plaintiff to continue to operate with the full knowledge that he would thereby be forced and compelled to dispose of his business;

(23) Created conditions which made it impossible for plaintiff to sell, except on a forced sale basis and at a depressed valuation;

(24) Having thus created conditions necessitating a sale, defendant then attempted to block potential buyers of plaintiff's business, with the expectation he would lose the value of his investment which he had built up over many years in the petroleum industry;

(25) Encouraged price wars by allowances to stations which it supplied directly, while at the same time refusing to grant similar allowances to plaintiff's stations, and to plaintiff's retailers, with the knowledge that such conditions would make it extremely difficult to operate during such periods;

(26) Granted discriminatory allowances to favored competitors of plaintiff's for extended periods of time during periods of price war, thereby extending and prolonging the period of such warfare, and forcing the plaintiff to operate at a loss during such period of time;

(27) Acquired numerous wholesalers and retailers;

(28) Refused to allow plaintiff to market the products which he obtained from Standard under the actual brand names so that plaintiff was unable to market the products under their commonly accepted names, and was forced to advertise such products under different and unfamiliar names to the general public, and at the same time in refusing to grant or extend to plaintiff advertising allowances, while extending allowances of this nature to competitors of plaintiff;

(29) Promised plaintiff would be allowed to service certain areas and then declined and refused to permit him to do so;

(30) Taken certain areas from plaintiff on the promise that these areas would be compensated by other areas and then failing to live up to such commitment;

(31) Arbitrarily, unlawfully, unreasonably and knowingly raised, fixed, controlled; acted, stabilized and affected the price of petroleum products sold within the States of Oregon and Washington;

(32) Established and maintained unreasonably high, excessive, monopolistic and noncompetitive prices on petroleum products, or attempted to do so, within the States of Oregon and Washington by the attempt to eliminate Clyde Perkins as a potential competitor;

(33) Attempted to control the marketing and price policies maintained by plaintiff with respect to his accounts and his operations, as well as his methods of marketing petroleum products to the general public;

(34) Attempted to utilize plaintiff and his agents and associates for the purpose of fixing and stabilizing prices throughout the petroleum industry, and to contact other petroleum companies who would normally compete with Standard, in an effort to persuade them to raise their prices to the general public, and to other consuming accounts, and to otherwise fix and control prices and other conditions of sale or resale;

(35) Eliminate and suppressed other jobbers and retailers;

(36) Exerted pressure upon plaintiff to force him to control the activities of his customers;

(37) Prohibited plaintiff from informing the general public in many instances of the price of his products, and to eliminate competition with stations which they owned, leased or controlled.



## VIII

## EFFECT OF THE RESTRAINT

The effect of the aforesaid restraint and attempt to monopolize has been to restrain trade and commerce among the several states, and an attempt to monopolize a part of the trade or commerce among the several states.

## IX

## PLAINTIFF, CLYDE PERKINS

Plaintiff, Clyde Perkins, for many years has been a marketer of petroleum products. Prior to 1945, after many years in the petroleum business, he had built up a substantial business with widespread marketing facilities throughout the Pacific Northwest. In 1945, together with Robert Harris and Lee Powell, it was proposed they construct their own terminal in the Portland area, which would permit them to receive products directly in the Pacific Northwest, rather than to rely upon the facilities of other petroleum companies. Defendant Standard Oil Company of California having obtained information of these plans and fearing potential competition, persuaded Perkins, Powell and Harris to enter into an exclusive arrangement with them under which Perkins, Powell and Harris acquired all of their products from defendant Standard Oil Company at prices which were to be posted by defendant Standard, less certain adjustments. Defendant Standard allocated most of southwestern Washington and most of western Oregon to Perkins, Powell and Harris, and in turn it was expected that the three jobbers would subdivide the area among themselves. Such an agreement was achieved and plaintiff became individually responsible, with the approval of defendant Standard, for most of southwestern Washington and for considerable territory within Oregon as well. From 1945 until approximately 1952, plaintiff's business expanded rapidly and he was able to sell all of

the products which were made available to him by defendant Standard and in many instances requested additional gallonage which was not made available by defendant Standard. Plaintiff's business acquired a certain esteem and respect throughout the area which he serviced and would have continued to grow and expand in a normal fashion had defendant Standard not embarked upon a conspiracy to restrain trade and to monopolize, which is outlined above.

## X

### RESULT OF DEFENDANT'S UNLAWFUL ACTS

As a direct result of defendant's actions and those of defendant's co-conspirators, plaintiff was unable in any fashion to dispose of the jobber portion of his business and was able to salvage only a small fraction of his retail business through leases. As a result of said action on the part of defendant Standard, plaintiff has been damaged in the sum of One Million Dollars (\$1,000,000.00).

## XI

### VIOLATION OF SHERMAN ACT

The acts of the defendant and its co-conspirators, as set forth hereinabove, have constituted and do constitute an unlawful combination in restraint of trade and a monopoly, or an attempt to monopolize, interstate trade and commerce, in violation of the Sherman Act (15 U.S.C.A. § 1 and 2).

## XII

### TREBLE DAMAGES

Plaintiff has been damaged in his business and property and by reason of the unlawful conduct and acts of the defendant Standard and that, under the provisions of an Act of Congress of the United States; approved October

15, 1914, 38 Stat. 731 (U.S.C.A. Title 15, § 15), he is entitled to recovery of the defendant three-fold damages by him sustained and the costs of the suit and reasonable attorneys' fees in the sum of One Hundred Thousand Dollars (\$100,000.00).

### **XIII**

#### **CONCEALMENT**

Defendant Standard Oil Company of California has fraudulently concealed the facts giving rise to the cause of action set forth herein by the following:

- (a) suppressing information concerning such facts;
- (b) blocking and preventing plaintiff from gaining access to such information;
- (c) diverting plaintiff in his efforts to uncover the true facts;
- (d) falsely and repeatedly assuring plaintiff that such facts did not exist;
- (e) by refusing to answer plaintiff's inquiries;
- (f) by cloaking its activities under false and misleading labels;
- (g) by feigning lack of knowledge;
- (h) studiously concealing facts;
- (i) by attempting to rewrite depositions which had been faithfully recorded by Court Reporters in an effort to distort and alter the true facts to its own advantage;
- (j) by attempting to delay plaintiff.

Plaintiff has been obliged to uncover the actual facts by a painstaking, careful and time-consuming evaluation of evidence, most of which was obtained over strenuous objections by defendant Standard and which has come to light

within the past four years. Plaintiff has diligently attempted to bring these facts to light at an earlier stage, but has been frustrated in his efforts by defendant. Defendant is and has been well aware of the true facts as outlined in this cause of action. Defendant's artifices and false assurances have been solely responsible for the delay in uncovering the information.

WHEREFORE, plaintiff prays for judgment against defendant Standard Oil Company of California, Inc. in the sum of Six Hundred Five Thousand One Hundred Forty-one Dollars and Thirty-nine Cents (\$605,141.39), which sum should be trebled in the manner provided by law, and for the further sum of One Hundred Thousand Dollars (\$100,000.00) for the reasonable attorneys' fees herein on his first cause of action; and for the sum of One Million Dollars (\$1,000,000.00), which sum should be trebled in the manner provided by law, and for the further sum of One Hundred Thousand Dollars (\$100,000.00) for the reasonable attorneys' fees herein on his second cause of action; and for his costs and disbursements incurred herein; and with respect to defendants Lee Powell, Harris Oil Company and Harris Distributing Company, that they set forth the nature of their respective interests under the agreements referred to in this fourth amended complaint.

/s/ ROGER TILBURY  
Roger Tilbury

McMULLEN, SNIDER & McMULLEN

By .....  
*Attorney for Plaintiff.*

PLAINTIFF REQUESTS A JURY TRIAL.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

**B. Answer of Defendant Standard Oil Company of California  
to Second Amended Complaint**

Defendant Standard Oil Company of California (herein called "this defendant"), by its attorneys, answers the Second Amended Complaint (herein called "complaint") filed by plaintiff Clyde Perkins as follows:

**FIRST DEFENSE**

The complaint fails to state a claim against this defendant upon which relief can be granted.

**SECOND DEFENSE**

This defendant admits, denies and avers as follows:

**I.**

This defendant admits that the complaint seeks to invoke the jurisdiction of the Court and to establish proper venue for this action on the basis of the provisions of the sections of the statutes referred to in paragraphs I and II of the complaint, and that it and Harris Oil Company and Harris Distributing Company are corporations licensed and doing business within this Judicial District; admits that Perkins Oil Company of Oregon and Perkins Oil Company of Washington are corporations engaged in business in the respective states. Except as so admitted, this defendant denies each and every allegation of paragraphs I and II of the complaint.

**II.**

This defendant admits and avers that plaintiff Clyde Perkins is an individual and is a citizen and inhabitant of the State of Washington; that between March 9, 1945, and



January 2, 1958, there was a business relationship between this defendant, as one party, and plaintiff Clyde Perkins and others, as the other party, said business relationship being embodied in the various written contracts described in paragraph IV of this answer; except as so admitted, this defendant denies each and every allegation of Part A of paragraph III of the complaint. This defendant admits and avers that it is a corporation organized and existing under the laws of the State of Delaware and that it maintains offices and places of business in the states of Washington and Oregon; except as so admitted, this defendant denies each and every allegation of Part B of paragraph III of the complaint. This defendant admits that Lee Powell is a citizen and resident of the State of Washington; except as so admitted, this defendant denies for lack of information each and every allegation of Part C of paragraph III of the complaint. This defendant admits that Harris Oil Company and Harris Distributing Company are Oregon corporations doing business in Oregon; except as so admitted this defendant denies each and every allegation of Part D of paragraph III of the complaint.

### III.

This defendant admits that plaintiff Clyde Perkins intends that certain words used in the complaint shall have the meanings specified in paragraph IV thereof. Except as so admitted, this defendant denies each and every allegation of paragraph IV of the complaint.

### IV.

This defendant admits and avers that the written contract dated March 9, 1945, attached to the complaint as Exhibit A, was executed by the parties thereto; that the term of said contract was extended by letter agreement (Exhibit 1 hereto) until September 13, 1953; that on April 6, 1953, said contract was terminated and a new five-year

contract was executed under which this defendant appointed plaintiff Clyde Perkins, Lee G. Powell and Dorothy M. Harris its consignee (Exhibit 2 hereto); that on July 16, 1956, the agreement of April 6, 1953, was terminated and a new contract was executed under which this defendant appointed plaintiff Clyde Perkins, Lee G. Powell, Harris Oil Company and Harris Distributing Company its consignee (Exhibit 3 hereto); and that the agreement of July 16, 1956, was mutually terminated as to plaintiff Clyde Perkins at his request as of January 24, 1958 (Exhibit 4 hereto). Except as so admitted, this defendant denies each and every allegation of paragraph V of the complaint.

#### V.

This defendant admits and avers that it and certain of its subsidiary companies are engaged in producing, purchasing, transporting and refining crude oil and in transporting and marketing gasoline and other refined products in various states of the United States; that under the terms of the contracts referred to in paragraph IV of this answer plaintiff Clyde Perkins and his jointly contracting partners undertook to use their best efforts to receive from this defendant and sell for this defendant stated quantities of specified refined petroleum products; that pursuant to said contracts this defendant supplied plaintiff Clyde Perkins and his jointly contracting partners with such specified products for such sales from this defendant's bulk storage facilities in the states of Washington and Oregon; that all refined products of the types so specified in said contracts which were sold during this period of time by and for this defendant in the states of Oregon and Washington were delivered from this defendant's storage facilities located in those states and had been held in storage in such storage facilities prior to delivery. Except as so admitted, this defendant denies each and every allegation of paragraph VI of the complaint.

## VI.

This defendant denies each and every allegation of paragraphs VII and VIII of the complaint.

## VII.

This defendant denies that plaintiff Clyde Perkins has been damaged in the sum stated in paragraph IX of the complaint, or in any other sum, or otherwise or at all, and denies each and every other allegation of said paragraph IX.

## VIII.

This defendant admits that plaintiff Clyde Perkins has employed Messrs. Roger G. Tilbury, Dean M. Alexander and Claude Snider for the purpose of bringing this action. Except as so admitted, this defendant denies each and every allegation in paragraph X of the complaint.

## IX.

This defendant admits and avers that Lee G. Powell, Harris Oil Company and Harris Distributing Company had joint rights with plaintiff Clyde Perkins in certain of the contracts described in paragraph IV of this answer. Except as so admitted, this defendant denies each and every allegation of paragraph XI of the complaint.

## X.

This defendant admits that Perkins Oil Company of Oregon and Perkins Oil Company of Washington are corporations. Except as admitted, this defendant denies each and every allegation of paragraph XII of the complaint.

## THIRD DEFENSE

Plaintiff Clyde Perkins' claim is based on his relationship to this defendant under certain of the contracts described in paragraph IV of the SECOND DEFENSE of this

answer. Under said contracts, plaintiff Clyde Perkins was a joint obligee with Lee G. Powell and with Robert B. Harris (and after his death with his successors). Both Lee G. Powell and the successors of Robert B. Harris are indispensable parties to this action.

#### FOURTH DEFENSE

This defendant re-alleges the facts set forth in the THIRD DEFENSE and avers that plaintiff Clyde Perkins has no standing or capacity to recover in his own name upon any right of action alleged in the complaint.

WHEREFORE, this defendant denies that plaintiff Clyde Perkins is entitled to the relief prayed for or to any other relief against it, and prays for judgment dismissing the action as to it with its costs and disbursements incurred herein, and for such other and further relief as the Court may deem just and proper.

KOERNER, YOUNG, MCCOLLOCH, &  
DEZENDORF

WAYNE HILLIARD

Koerner, Young, McCulloch &  
Dezendorf

Wayne Hilliard

*Attorneys for Defendant  
Standard Oil Company of  
California*

#### III. Trial Court Charge to the Jury

#### [6326] INSTRUCTIONS BY THE COURT

The Court: Ladies and gentlemen of the jury, this case has now progressed to the stage where it becomes the duty, and indeed the privilege, of the Court to advise with you and to instruct you as to the law which surrounds and applies to the facts of this case and which will guide

you as trial jurors throughout your entire deliberations upon your ultimate verdicts and conclusions in the matter.

You, members of the jury, are the sole judges of the facts, and the Court has no right and indeed no desire to influence you in this regard. If I can suggest, pinpoint, and advise, well and good, but not to direct or influence. So if during the course of the trial or these instructions you gain some thought or some impression that the Court is indicating or suggesting to you a particular jury conclusion on some issue of fact, you must disabuse your minds of that thought or impression.

On the other hand, the law of the United States permits the trial judge to comment upon the evidence or on the witness during the course of the trial if that judge feels so inclined. But bear in mind that if during the [6327] trial I have made some comment towards the evidence, towards a witness, it is only my expression and my thoughts at the moment, and they are not facts, and you as trial jurors may consider them or entirely disregard them.

During the course of the trial I may have asked some questions of some of the witnesses. There was no intent to bring out any particular facts that I thought were more important. It was just that I thought that there was some area to be clarified.

Now, it is the duty of the attorneys on each side of the case, and particularly one as hardly contested like this, to object when the other side offers testimony or other evidence which counsel believes is not properly admissible. When the Court has sustained an objection to a question, the jury is to disregard the question and may draw no inference from the wording of it or speculate as to what the answer might have been if the witness had answered. Upon allowing testimony or other evidence to be introduced over the objection of counsel, the Court does not, unless expressly stated at that time to you, indicate any opinion whatsoever as to the weight or the



effect of the evidence. It is merely ruling that it is lawful evidence to come to you.

As you are the sole judges of the facts, so is the Court the sole judge of the law of the case, and you are [6328] under oath to accept and to follow the law as this Court shall give it to you and not substitute what you think the law is or what you might think the law should be.

Under the law, these instructions must be given to you by the Court orally and should not be repeated. So may I ask you to give me your best attention.

The order on which parts and subject matters in the instructions are to be given to you has no special significance, and it is not to give to you any suggestions as to the relative importance. You should not single out any particular portion, part or subject of the instructions and place undue emphasis on such an instruction, but you must take them and consider them all as a whole.

[6329] The Court: (Continuing) The order and grouping of the instructions is my doing, and it is my computations with the hope that you will find a continuity of topics and subjects which will help you in approaching and dealing with your obligation in arriving at a true and just verdict from all of the facts in dispute before us.

Neither are you to be concerned as to the wisdom of any law, regardless of any opinion you might have as to what the law is or ought to be, it would be a violation on your part as well as on my part to disregard it. Constantly bear in mind that you are to perform as trial jurors without bias, or prejudice to any party or thought of public concern about the matter. The law does not permit the trial jurors to be so governed or controlled. The parties and the public expect that you will carefully and impartially consider all of the evidence, follow the law as given to you by the Court and render a just verdict regardless of what the consequences might be.

With that, members of the jury, this law action is based upon alleged violations of the so-called Robinson-Patman

Act of the United States, which is referred to generally as anti-discrimination laws, and which in general prohibits discriminatory practices in competitive business fields where a person's business or property is apt to be injured. [6330] I shall divide these instructions into eight main categories as follows:

First, a delineation of the principal parties and their relationship to each other;

The provisions of the Robinson-Patman Act which are pertinent to us. A summary of the plaintiff Clyde Perkins' contentions giving rise to the three causes of action which he is pressing against the defendant Standard and Standard's contentions in answer and defense in the matter.

The material elements of each cause of action by plaintiff Clyde Perkins for the recovery of alleged damages sustained by himself and the two Perkins corporations on account of the alleged violation of the various sections of the Act.

Five, the necessity of either a written or an oral assignment of the Perkins corporations' causes of action against defendant Standard to plaintiff Clyde Perkins.

Next, the defense of Standard, referred to as the "good faith meeting of competition" defense to a price discrimination charge.

Next, the proper measure and method of assessing damages, if you arrive at that stage.

Next, the Court's suggestions and rules and cautions to you about your duties as jurors in weighing and viewing and dealing with the evidence, the witnesses, and their [6331] testimony.

Then, lastly, the directions to you as to the form of verdict and the interrogatories which the Court will submit to you.

Now, Category One relates to the parties. As you well know, the plaintiff is Clyde Perkins. You must consistently keep in mind that he appears and is prosecuting

in this action three several distinct causes of action, seeking a recovery in each of damages by reason of alleged violation of the Act by Standard.

The first one, his own individual alleged cause of action against the defendant Standard Oil Company of California, a corporation, to whom I have been and will hereafter refer to as "Standard" or possibly "defendant Standard."

Second, the alleged cause of action of Perkins Oil Company of Oregon, an Oregon corporation, whom we have been referring to, and I will hereafter refer to as Perkins of Oregon, also against defendant Standard.

The third cause of action, the alleged cause of action of Perkins Oil Company of Washington, a Washington corporation, whom I shall call Perkins of Washington.

The evidence before us establishes that prior to the year 1952 the plaintiff, Clyde Perkins, operated this business of marketing refined petroleum products supplied [6332] to him by defendant Standard as an individual or in some relationship with his son, Allen Perkins. After 1952, Perkins of Oregon, and Perkins of Washington were incorporated and Clyde Perkins, the three of them marketed these products. Now businessmen can freely and rightfully incorporate their businesses to gain the advantages that are inherent to a corporate operation. But if a businessman chooses to incorporate his business, he must take the legal consequences of this form of operation. For while Clyde Perkins might think of himself as the sole proprietor of the grouped enterprises—that is, of himself and the two corporations, he cannot disregard the three several and independent legal entities—himself, the corporation of Washington and the corporation of Oregon, each having in its own several and distinct capacities several and distinct legal rights and duties with reference to each other and to the three parties.

In this action, Clyde Perkins asserts claims alleged to have accrued to him as an individual as well as claims alleged to have accrued to Perkins of Oregon and claims al-

leged to have accrued to Perkins of Washington. Plaintiff asserts further that the claims of these corporations were legally assigned to him prior to the commencement of this action on March 2, 1959. I instruct you that you must consider each of these three claims separately and must pass [6333] on each of them separately from the other. In other words, you must disregard any claim by plaintiff that he and the two corporations can be treated as a single entity or a family group.

You were told earlier in the trial that there are three other formally named defendants, Harris Oil Company, a corporation; Harris Distributing Company, a corporation, and Lee Powell, but you are to give them no concern whatever in your consideration of this litigation between Clyde Perkins and Standard for the reason that any interest that they may have in the matter is purely one of law for the Court to deal with.

It appears, I suggest to you, from the evidence that Clyde Perkins received his supply of Standard's brands of gasoline under two basic contracts, one dated April 16th, 1953, and the other July 16th, 1956. You will note in the contract, and as you have heard, of course, during the trial, that Clyde Perkins and his then associates, Lee G. Powell, Dorothy M. Harris, Harris Oil Company, and Harris Distributing Company, were designated as co-consignees with the joint right to receive the gasoline under the contracts. It is conclusive from the evidence that Clyde Perkins and his mentioned associates, with the full approval of Standard, divided the allotted Oregon-Washington marketing area among themselves and each operated independently of the other. [6334] So in this phase of the case we are concerned only with the brands of gasoline which Clyde Perkins himself received from Standard.

I suggest to you that Clyde Perkins after receiving Standard's brands of gasoline, then in turn utilized or marketed some of the gasoline to retail public consumers through stations operated by his agents, but placed or

turned over the great bulk of the supply to Perkins of Oregon and Perkins of Washington for ultimate sale and distribution to the consumer through outlets in which they, he, that is, and the corporations had interests respectively or through their respective customers. It is for you to determine under the facts the exact relationship and terms of sale among these parties as I only suggest the foregoing channel of the flow of the gasoline as the mechanics of getting the gasoline received from Standard through Clyde Perkins, Perkins of Oregon and Perkins of Washington to the ultimate consumer.

I remind you again that this action is being brought and pressed by an individual person as plaintiff against a corporation as defendant. Also, that there are a number of corporate parties, such as the Perkins Corporation, the Signal Oil and Gas Company, and numerous other corporations as well as individual persons referred to as purchasers, customers, competitors and the like.

Of course, a corporation can only conduct its affairs [6335] and act through its officers, agents, and employees, and the corporation is accountable and responsible as its own for the acts and doings of its officers, agents, and employees while acting in the business and the affairs of the corporation and done within the scope of the delegated authority to the officers, agents, or employees expressly or impliedly given or reasonably apparent from all the attending facts and circumstances surrounding it.

While, of course, humans in their own individual capacities and dealings think, speak and act for themselves and are thereby accountable to themselves and others for their conduct, such individuals can also, just as a corporation, can act and conduct their affairs and businesses through agents and employees and will be likewise held accountable and responsible for the acts of those agents and employees.

The whole of this case should be considered and decided by you as an action between persons of equal standing



in the community, of equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial at your hands as a private individual. The law is no respecter of persons; all persons, including corporations, stand equal before the law, and are to be dealt with as equals in this court.

Now as to Category Two, dealing with the Robinson-[6336] Patman Act of Congress and the Provisions thereof which are involved in this matter.

The Supreme Court of the United States in interpreting the basic Act of Congress here involved once said:

"Congress was dealing with our system of free competitive enterprise, which it sought to protect. That is, to preserve the fullest practical competition in the market place."

So, members of the jury, it is with that same practical spirit and attitude that we must adopt and maintain throughout our dealing with this matter before you and for your consideration.

You are instructed that the pertinent portions of the Act involved provide:

"It shall be unlawful for any person engaged in commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such [6337] discrimination, or with customers of either of them."

The next section of interest to us provides:

"It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person

in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities mentioned, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities."

The next section that is pertinent for us reads:

"It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms."

You will recall that the Act just read to you forbids one directly or indirectly to discriminate in price between [6338] different purchasers and customers of commodities of like grade and quality when the transactions are in commerce. And further forbids payment for or furnishing of services and facilities to persons and customers on equal or disproportionate terms when the transactions are in commerce.

As to these items, you know, of course, that directly and indirectly means exactly what it says—that is, one is prohibited from doing indirectly or in a roundabout way what he cannot do directly.

And as for the meaning of the terms "Purchasers" and "Customers," you are instructed that the Court has determined as a matter of law under the only reasonable construction of all the facts and circumstances surrounding the parties in all the transactions herein involved that Clyde Perkins individually, Perkins of Oregon, Perkins of Washington, Signal Oil and Gas Company, and each of them, were purchasers within the meaning and the use of that

term as used in the Act and that the dealers and outlets of Clyde Perkins individually, Perkins of Oregon, Perkins of Washington and Signal Oil and Gas Company were customers of those purchasers, respectively, and that the Chevron and Signal dealers were customers of Standard, all within the meaning and use of the term "customer" as used in the Act.

And further, that Clyde Perkins individually, Perkins of Oregon, Perkins of Washington, and Signal Oil and Gas [6339] Company were customers of Standard within the meaning of that term as used in the Act.

You have heard much during the trial about the contracts between Clyde Perkins and the defendant Standard and whether such contracts were consignment agreement or purchase of sale or whether plaintiff, Clyde Perkins, was a consignee of a purchaser from Standard Oil.

On a number of occasions, I suggested to you that you keep from placing any significance upon counsel's use of the word themselves until the question became one of fact for you or one of law for me.

Now, since I have instructed you that the plaintiff, Clyde Perkins, is a purchaser within the meaning of that term under the Robinson-Patman Act, I instruct you to disregard and strike from your minds all testimony and consideration of whether or not these contracts were consignments or purchaser and sale contracts in the commercial law sense. It has no bearing in your considerations here whatsoever. So far as this case is now concerned, it makes no difference at all whether or not the plaintiff, Clyde Perkins, is identified as a consignee in any contract, invoice or other piece of evidence in the case.

[6340] The Court: (Continuing) As for the phrase of commodities of like grade and quantity you are to keep in mind that there is no question about it, and that all the parties have acknowledged that the respective brands of gasoline of like grade and quantity were delivered by Standard to Clyde Perkins, to Signal Oil and Gas Company,

its customers, and Standard's Chevron and Signal dealers.

Now, of course the phrase "in commerce" means interstate commerce, and you are instructed as a matter of law that all of the transactions involved among all of the purchasers and customers had in connection with commodities flowing through interstate commerce and that requirement of the law is satisfied for us here.

Now, going to the contentions of Clyde Perkins, of the plaintiff Clyde Perkins and the defendant Standard, Clyde Perkins by his contentions in the pretrial orders as amended alleges in substance that during the period of March, 1955, and continuing until the end of '57, 1957, he purchased refined petroleum products from the defendant Standard, and defendant then had discriminated in price by selling to plaintiff Clyde Perkins at higher prices than the prices charged by Standard to plaintiff's competitors with respect to gasoline both on regular and premium grade.

The particular competitors concerned are Signal Oil and [6341] Gas Company and Chevron dealers and Signal dealers, the latter two selling Standard and Signal gasoline under Standard's respective brands.

Plaintiff further alleges that the defendant Standard discriminated against plaintiff by furnishing certain services and facilities to plaintiff's competitors and by paying such competitors for services or facilities furnished by them without making such services or facilities or payment therefor available to plaintiff Clyde Perkins on proportionately equal terms.

The plaintiff further alleges that as a result of these discriminations he was injured in his business and property by his inability to compete effectively with the favored competitors or the customers of these competitors, namely, Signal Oil and Gas Company and Chevron and Signal dealers.

Plaintiff further alleges that the claimed discrimination of defendant Standard extends also against Perkins of Washington and Perkins of Oregon; and that these cor-

porations were also injured by reason of such discrimination on the part of the defendant Standard in favor of Signal Oil and Gas Company, Chevron and Signal dealers, and the customers of such of plaintiff's competitors.

The plaintiff further alleges that prior to the filing of this action on March 2, 1959, Perkins of Oregon and Perkins of Washington assigned their respective claims [6342] against the defendant Standard to the plaintiff.

Now, the defendant Standard in its contentions in the pretrial orders as amended denies that it has in anywise violated any section of the Robinson-Patman Act called to your attention.

Standard further denies that its sales of gasoline may have had the effect to substantially lessen competition or tend to create a monopoly in any line of commerce or to injure, destroy, or prevent competition with Standard or with any persons knowingly receiving the benefit of any discriminatory price or with the customers or either of them.

Defendant Standard further denies that plaintiff Clyde Perkins was purchasing from defendant Standard. That of course has been resolved adversely to that contention.

Defendant Standard denies during the relevant years, 1955 and 1956 and 1957, that Clyde Perkins as an individual was engaged in business as a marketer of refined petroleum products; and defendant Standard further denies that plaintiff Clyde Perkins or Perkins of Oregon or Perkins of Washington was injured in business or property by reason of any act of Standard's connected with the sale of gasoline.

The defendant Standard further denies that Perkins of Oregon or Perkins of Washington assigned in writing or otherwise any claim which they, the corporations, might have [6343] against Standard to the plaintiff Clyde Perkins prior to March 2, 1959, or otherwise within four years from the time of any such claims could have accrued or originated.



Finally, defendant Standard contends and asserts the defense known as the good faith meeting of competition defense, and I will instruct you further on the law bearing on this defense later on.

There may be testimony, or documents presented in evidence during the course of the trial relating to Standard's dealing with the Washington Co-Operative Farmers Association, Clipper Oil Company, True's Oil Company, Meritt-Truax, W. L. Peavey, Truax Oil Company, and Lee G. Powell and Dorothy M. Harris or Harris Oil Company or Harris Distributing Company.

You are instructed, members of the jury, that there is no evidence before you from which you could find the defendant Standard in its dealings with any of these companies or persons has discriminated against Clyde Perkins or the Perkins Corporations in price or in payment of service or facilities or in furnishing service or sales.

So, accordingly I withdraw from your consideration any claim by plaintiff which is based on Standard's dealings with any of these named companies or individuals.

I further withdraw from your consideration any claim [6344] which may have been advanced by the plaintiff based on any alleged discrimination in price or in payment of service or facilities furnished by a customer or in the furnishing of services and facilities to customers relating to the sale of furnace oil, diesel oil, stove oil, automotive diesel oil, and kerosene, including all claims based on Standard's sales of furnace oil and stove oil to the Time Oil Company.

You may however consider what effect, if any, the price, service, or facility discrimination by Standard against either Perkins of Washington or Perkins of Oregon on gasoline purchased, if any there was, had upon the furnace, diesel, stove and automobiles diesel oils and kerosene business, or either of the two corporations, when and if you are considering the matter and amount of damage that the plaintiff Clyde Perkins should recover on account of any

such discrimination by Standard, if any, you may consider it.

Also, members of the jury, you are instructed as a matter of law that there is no evidence before you from which you could find that the defendant Standard paid or contracted for the payment of anything of value to or for the benefit of Signal Oil and Gas Company in compensation or in consideration of any service or facility furnished by Signal Oil and Gas Company; and, accordingly, you are instructed that you cannot award plaintiff any damage on [6345] account of any such alleged payment by defendant Standard; and, further, that there is no evidence before you from which you could find the defendant Standard discriminated in favor of Signal Oil and Gas Company and against plaintiff Clyde Perkins or Perkins of Oregon or Perkins of Washington by contracting to furnish or furnishing or by contributing to the furnishing of any service or facility connected with the processing, handling, sale, or offering for sale of gasoline.

Accordingly, I instruct you as a matter of law that you cannot award plaintiff's damage on account of any such alleged discrimination in the furnishing of services or facilities in connection with the dealings of Signal Oil and Gasoline.

Turning now to the category of necessary elements of the three causes of action alleged by Clyde Perkins, members of the jury, as a general proposition, the Antitrust Laws do not require Standard to protect its jobbers or distributors from competitive hardships generally; nor do they require Standard to assure those jobbers and distributors a profit ratio. There is nothing in the Antitrust Law that requires Standard to supply jobbers with prices or in the case of consignee jobbers the commission rates equal to those which Standard's competitors, that is, other refineries of petroleum products charge or extend to their jobbers or [6346] distributors.

Accordingly, plaintiff Clyde Perkins cannot recover damage in this action on any of the causes of action for loss which he or Perkins of Oregon or Perkins of Washington, or any of them may have sustained because of adverse competitive conditions of the market generally or because of the inability of Perkins of Oregon and Perkins of Washington to compete with jobbers or distributors supplied by refineries other than Standard and which did not result from any violation of the act by Standard.

I will in a moment instruct you in detail on the various elements which plaintiff must prove to establish that Standard has violated the Antitrust Statute or been in discrimination in prices or in payment of services or facilities furnished by the customers or in the furnishing of services and facilities.

But, first, in general I instruct you that a private treble damage to plaintiff cannot recover damages by proving only a violation of the statute, that is, the charging of discriminatory prices to different purchasers with the resulting adverse effect on competition or the failure to furnish services or facilities to purchasers on proportionately equal terms or the failure to make payments on proportionately equal terms for services or facilities furnished by customers.

[6347] A private treble damage plaintiff must in addition prove as a reasonable probability that the violation had an adverse impact or an effect upon his business or property or that of his assignor or that caused him or his assignor to suffer damage in an amount ascertainable with reasonable probability.

Now, I am proceeding to instruct you on the various elements which must be proven to establish a violation of the statute and to show injury to business or property and the proper basis for the assessment of damage, if any, may have been shown to your satisfaction.

In order for the plaintiff Clyde Perkins to recover damages for injury to his own property or properties by reason of any price discrimination by defendant Standard in the sale of gasoline, he must prove by a preponderance of all of the evidence four elements which make up such a claim, and these are:

First, that Standard sold gasoline to Clyde Perkins at higher prices than the prices charged by Standard on reasonable contemporaneous sales of gasoline of the same type to competitors; and,

Two, that the reasonably probable effect of such discrimination might have been to substantially lessen competition or tend to create monopoly in any line of commerce or to injure, destroy, or prevent [6348] competition by Clyde Perkins with Standard or with any favorite purchaser of Standard, or with a customer of a favored purchaser of Standard.

Three. That plaintiff Clyde Perkins was injured in his property or business by reason of such discrimination; and last,

Four. That this injury resulted in damage to him in an amount which can be estimated and determined with reasonable inferential probability supported by reasonable data.

So, members of the jury, if you find a failure on the part of Clyde Perkins to prove any one of these four necessary elements to establish his cause of action for price discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the defendant Standard.

If, however, you find from a preponderance of all of the evidence before you that Clyde Perkins has proved each and all of these four necessary elements to establish his cause of action for price discrimination by Standard against himself, then your verdict on this phase of his



cause of action must be for the plaintiff Clyde Perkins, unless and only if the defendant Standard has established and proved by a preponderance of all of the evidence before you its defense of good faith in meeting of competition, on [6349] which I shall later instruct you more fully.

Members of the jury, I repeat that whether plaintiff Clyde Perkins is able to establish any one of his alleged causes of action against defendant Standard depends on whether he proves by a preponderance of all of the evidence before you each and all of the necessary elements of his causes, respectively.

Since, I will be giving you some six sets of necessary elements dealing with the three phases of each cause of action, I want to make certain that you have a clear picture in your minds of this grouping and continuity in the statement of the necessary elements. So, I will once again give you the four elements and directions as to your instructions, which I just gave you—not to emphasize, mind you, but only with the few that the repetition will pinpoint the elements and help you to get into the swing and follow.

These three sets of material elements deal with the three phases of Clyde Perkins individually alleged cause of action.

Now, in order for Clyde Perkins to recover for injury to his business or property by reason of any price discrimination by defendant Standard in the sale of gasoline, he must prove by a preponderance of all of the evidence four elements which make up such a claim.

[6350] They are:

First, that Standard sold gasoline to Clyde Perkins at higher prices than the price charged by Standard on reasonable contemporaneous sales of gasoline of the same type to competitors of plaintiff.

Two. That the reasonably probable effect of such discrimination may have been to substantially lessen com-



petition or tend to create a monopoly in any line of commerce or to injure, destroy, or prevent competition by Clyde Perkins with Standard or with any favored purchaser of Standard or with a customer of a favored purchaser; and,

Three: That plaintiff Clyde Perkins was injured in his business or property by reason of such price discrimination.

Four. That this injury resulted in damage to him in an amount which can be estimated and determined with reasonable inferential probability supported by reasonable data.

So, if you find a failure on the part of Clyde Perkins to prove any one of these four necessary elements to establish his cause of action for price discrimination by Standard against himself, then your verdict on this phase of the cause of action must be for the defendant Standard. [6351] The Court: (Continuing) If however, you find from a preponderance of all of the evidence before you that Clyde Perkins has proved each and all of these four necessary elements to establish his cause of action for price discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the plaintiff, Clyde Perkins, unless and only if the defendant Standard has established and proved by a preponderance of all of the evidence before you its defense of good faith meeting of competition on which I shall later instruct you more fully.

Now, as to the second phase of this first cause of action, in order for plaintiff Clyde Perkins to recover damage for injury to his business or property by reason of any discriminatory payments by defendant Standard for services or facilities furnished to another customer, plaintiff must prove by a preponderance of all of the evidence three elements which make up such claim. These are, first, that Standard paid or contracted for the payment of anything

of value to or for the benefit of any Chevron or Signal dealer as compensation or in consideration for any service or facility furnished by such dealer without making such payment available to plaintiff on proportionately equal terms; and two, that by reason of such discrimination and payment for service or facilities, plaintiff Clyde [6352] Perkins was injured in his business or property; and third, that this injury resulted in damage to him in an amount which can be estimated and determined with reasonable probability on the basis just mentioned before.

If you find a failure on the part of Clyde Perkins to prove any one of these three elements to establish his cause of action for payment for performance of service and facilities discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the defendant Standard. If, however, you find from a preponderance of all of the evidence before you that Clyde Perkins has proved each and all of these three necessary elements to establish his cause of action for payment for performance of service or facilities discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the plaintiff Clyde Perkins.

Now, on the third phase of Clyde Perkins' own cause of action, in order for plaintiff Clyde Perkins to recover damage for injury to his own business or property by reason of any discrimination in the furnishing of services or facilities connected with the sale of gasoline by the defendant Standard to another customer, he must prove by a preponderance of the evidence three elements that make up such a claim, and they are: First, that Standard [6353] contracted to furnish or furnished or contributed to the furnishing of any service or facility connected with the processing, handling, sale or offering for sale of gasoline to or for the benefit of any Chevron dealer or Signal dealer but failed to make such service or facility available to plaintiff on a proportionately equal term; and two, that

plaintiff Clyde Perkins was injured in his business or property by reason of such discrimination in the furnishing of services or facilities; and three, that this injury resulted in damage to him in an amount which can be determined with reasonable probability on a like basis as just mentioned.

In this third phase, if you find a failure on the part of Clyde Perkins to prove any one of these three necessary elements to establish his cause of action for furnishing services or facilities discrimination by Standard against him, then your verdict on this phase of this case on the cause of action must be for the defendant Standard. If, however, you find from a preponderance of all of the evidence before you that Clyde Perkins has proved each and all of these three necessary elements to establish his cause of action for furnishing services or facilities discrimination by Standard against himself, then your verdict on this phase of his cause of action must be for the plaintiff Clyde Perkins.

[6354] Inasmuch as the necessary elements for the alleged cause of action on behalf of Perkins of Oregon and Perkins of Washington are identical, I can state the material elements in the plural, as you will note that they are to be applied to the two corporations alike, but severally, of course. So these three sets of material elements deal with the three phases of Clyde Perkins' claims of the alleged cause of action on behalf of Perkins of Oregon and Perkins of Washington respectively.

In order for the plaintiff Clyde Perkins to recover for injury to the business or the property of Perkins of Oregon or Perkins of Washington, or either of them, by reason of any discrimination in price by the defendant Standard in the sale of gasoline, plaintiff must prove by a preponderance of the evidence each of the five elements which make up the claim. These are, first: that Standard sold gasoline to them or either of them at a higher price than the price charged by Standard on reasonable con-

temporaneous sales of gasoline to the same type of competitors of these corporations; two, that the reasonable probable effect of such discrimination may have been to substantially lessen competition or tend to create a monopoly in any line of commerce or to injure, destroy or prevent competition by Perkins of Oregon or Perkins of Washington, or either of them, with Standard or with any favored purchaser of [6355] Standard or with a customer of a favored purchaser; and three, that Perkins of Oregon and Perkins of Washington, or either of them, was injured in its business or property by reason of such discrimination; and four, that such injury resulted in damage in an amount which can be estimated and determined with reasonable inferential probability and be supported by reasonable data; and five, that each of these corporations has assigned its claim against Standard to plaintiff Clyde Perkins within four years from the time of any damage alleged to have been suffered by them throughout the claim period actually occurred and prior to March 2, 1959.

Now, you will note, members of the jury, that these material elements of price discrimination are identical with the corporation as it is with Clyde Perkins individually, with the additional necessary element on behalf of the corporation that there be an assignment of their claim to Clyde Perkins as plaintiff executed prior to March 2nd, 1959. If you find a failure on the part of Clyde Perkins to prove any one of these five necessary elements to establish his cause of action for price discrimination by Standard against either one or both of the two Perkins corporations, then you cannot find a verdict for Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them. If, however, you find [6356] from a preponderance of all of the evidence before you that Clyde Perkins, plaintiff, has proved each and all of these five necessary elements to establish his cause of action for price discrimination by Standard against either one or



both of the two Perkins corporations, then you must find a verdict for plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them, unless and only if the defendant Standard has established and proved by a preponderance of all of the evidence before you its defense of good faith meeting of competition on which I shall later instruct you more fully.

In order for plaintiff Clyde Perkins to recover damages for injury to the business or property of Perkins of Oregon, Perkins of Washington, or either of them, by reason of any discriminatory payment by defendant Standard for services or facilities furnished by customers, plaintiff must prove by a preponderance of the evidence four elements which make up—I beg your pardon. That is right, four elements which make up such claim: First, that defendant Standard paid or contracted for the payment of anything of value to or for the benefit of any Chevron or Signal dealer as compensation for and in consideration for any services or facilities furnished by such dealer without making such payments available to Perkins of Oregon and Perkins of Washington, or either of them, on proportionately [6357] equal terms; two, that Perkins of Oregon and Perkins of Washington, or either of them, was injured in its business or property by reason of such discriminatory payments; and third, that this injury resulted in damage in an amount which can be estimated and determined with reasonable probability on like basis of reasonable data; and fifth, that each of these corporations assigned its claim against Standard to plaintiff Clyde Perkins within four years from the time any damage alleged to have been suffered by them throughout the claim period actually occurred and prior to March 2nd, 1959.

If you find a failure on the part of Clyde Perkins to prove any of these four necessary elements to establish his cause of action for payment for performance of services or facilities discrimination by Standard against either



one or both of the two Perkins corporations, then you cannot find a verdict for plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them. If, however, you find from a preponderance of all of the evidence before you that plaintiff Clyde Perkins has proved each and all of these four necessary elements to establish his cause of action for payment for performance of services or facilities discrimination by Standard against either one or both of the two Perkins corporations, then you must find a verdict for [6358] plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them.

Lastly, in order for plaintiff Clyde Perkins to recover damage for injury to the business or property of Perkins of Oregon and Perkins of Washington, or either of them, by reason of any discrimination in the furnishing of services or facilities connected with the sale of gasoline by defendant Standard, he must prove by a preponderance of the evidence four elements which make up such a claim, and these are: One, that defendant Standard contracted to furnish or furnished or contributed to the furnishing of any service or facilities connected with the processing, handling, sale or offering for sale of gasoline to or for the benefit of any Chevron dealer or Signal dealer but failed to make such service or facilities available on proportionately equal terms to Perkins of Oregon and Perkins of Washington or either of them; and two, that Perkins of Oregon and Perkins of Washington, or either of them, was injured in its business or property by reason of such discrimination; and three, that this injury resulted in damage in an amount which can be estimated and determined with reasonable probability on like basis of reasonable data; four, that each of these corporations assigned its claims against Standard to the plaintiff Clyde Perkins within four years from the time any damage alleged to have been [6359] suffered by them throughout the claim period actually occurred and prior to March 2, 1959.

If you find a failure on the part of Clyde Perkins to prove any one of these four necessary elements to establish his cause of action for furnishing services or facilities discrimination by Standard against either one or both of the two Perkins corporations, then you cannot find a verdict for plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporations or both of them. If, however, you find from a preponderance of all of the evidence before you that plaintiff Clyde Perkins has proved each and all of these four necessary elements to establish his cause of action for furnishing services or facilities discrimination by Standard against either one or both of the two Perkins corporations, then you must find a verdict for plaintiff Clyde Perkins on this phase of the claimed cause of action of such corporation or both of them.

[6360] The Court: (Continuing) There you will notice the necessary elements for payment of services and facilities, discrimination as well as furnishing services and facilities, discrimination are identical. Clyde Perkins individually and the two corporations with the additional element on behalf of each of the corporations that they assigned their claims to Clyde Perkins, as you were advised prior to March 2nd, 1959.

Now, Members of the Jury, by way of a summary recap of my directions as to your verdicts, you will now understand that if plaintiff Clyde Perkins fails to prove and establish all three phases of any one or more of the three alleged causes of action—that is, phase one, being price discrimination; and two, being payment for; and three, furnishing of services and facilities discrimination. Then it follows that if plaintiff Clyde Perkins does prove and establish by a preponderance of all of the evidence under these instructions any one or more of the three phases—that is, one, price, two, payment for, and three, furnishing of services and facilities discrimination of any one or more of the three alleged causes of action, then you must return a verdict in favor of the plaintiff-Clyde Perkins on any such one or more of the three causes of action.

You will recall that one of the elements of the claim of price discrimination by Standard against Clyde Perkins [6361] individual and the two Perkins corporations was that Standard sold to Clyde Perkins at higher prices than the price charged by Standard to others. In this connection I instruct you that the term price means the final net amount paid by a purchaser to a seller after taking into account all discounts, rebates, allowances, adjustments, and taxes, if any there be which were a part of the terms of the sale or later allowed and granted at any time within the claim period. Bear in mind that differences in the terms of sale do not necessarily affect the price directly or indirectly. May I withdraw that. Bear in mind that differences in terms of sale which do not affect the price directly or indirectly are not to be considered by you in determining whether or not there was a discrimination in price between purchasers even if such difference in the terms of the sale did affect the cost of the product to the customer such as items of expense or other cost of the transaction that go in to make up the total cost of the product to the purchaser rather than the price paid by the purchaser to the seller for the product. Therefore, you are instructed that in computing or determining the final net price charged by Standard to a competitor of Clyde Perkins or either of the Perkins corporations, such as to Signal Oil and Gas or to a Chevron or to a Signal dealer, you must first deduct all discounts, allowances, payments, rebates, and taxes made and [6362] allowed within the claim period in order to determine whether or not such final net price was in fact lower than the final net price computed in like fashion which defendant Standard charged plaintiff, Clyde Perkins, for like grade and quantity.

You all know that when we speak of price in connection with price discrimination, we mean the final net price which the purchaser paid to the seller as computed on the above basis.

You are instructed that as a matter of law that there is not discrimination in price if the price charged by Standard to two purchasers are identical even though in one case the price has been firmly agreed upon in the contract while in the other the contract price was higher but was reduced by a contemporaneous or later adjustment, such as a temporary allowance. In other words, a purchaser receiving the same price as other purchasers cannot complain merely because he has no contractual assurance that the cut price will continue in the future for any definite period of time while in the case of other purchasers such contractual assurance exist. For this reason you are instructed that in determining whether a discrimination in price existed you must compare the prices after all adjustments have been properly and ultimately made at any time within plaintiff's claim period in accordance with the definition as I have [6363] given you, and you must disregard any such prices which were based and arrived entirely on a firm contractual payment or for any other part upon such agreement and in part upon a temporary price deduction.

It is the law that if a plaintiff has proved by a preponderance of the evidence that the defendant had discriminated in price in the sale of gasoline between different purchasers who were in competition with each other and that the price differential was substantial, and applied to a substantial quantity of gasoline over a substantial period of time, you may infer from such facts that such price differential may have had the necessary adverse effect on competition, but you are the judge of the facts and you are entirely to draw such inferences on the basis of all of the evidence before you in this case.

You have heard in these instructions such phrases as price differential being substantial, substantially to lessen competition, substantial quantity of gasoline, and substantial period of time. These phrases all utilizing the word "substantial."



Members of the jury, something to be substantial in character or quantity simply means of some real existence or substance, as distinguished from being imaginary, unreal, or negligible.

Now, as to the required written or oral assignments of [6364] the Perkins operations' causes of action to plaintiff Clyde Perkins. You will recall that the five necessary elements of plaintiff Clyde Perkins three phases of his case of actions seeking to enforce the causes of the two Perkins corporations is—that each of the corporations assigned their respective cause of action for discrimination by defendant Standard to plaintiff within four years from the time any damage was suffered and in any event prior to March 2, 1959.

You are instructed that under the law this required assignment or transfer of a cause of action may be accomplished by either a written instrument or by a parol arrangement—that is, by words and conduct of the assignor, the party making the transfer, and the assignee, the party, accepting the transfer.

In this cause of action plaintiff has claimed and he, his son, Allen Perkins, and his bookkeeper, Mrs. Maxine Ross, have testified, that the written assignments from the two corporations to plaintiff which have been identified as Exhibits 17A and 17B, were executed prior to the filing of this lawsuit on March 2, 1959. The defendant, by the testimony of the witness Bowring, Black, and Heiderich, and the exhibits identified through these witnesses, has introduced evidence which defendant claims tends to show that these written assignments were not only not executed [6365] prior to March 2, 1959, but were in fact executed after the Perkins office acquired a Selectric typewriter in November of 1961. The witness Holcomb has given you his testimony concerning his analysis of some of the typewriter and type sample evidence which the plaintiff claims tends to support his position. Also the witnesses, Snider and Nance, have testified to their respective participation



in the preparation and typing of the Exhibit 17A and 17B. You have also heard the testimony of other persons concerning it all of which the plaintiff claims tends to support his contention that the purported exhibits were typed and executed sometime prior to the filing of this lawsuit on March 2, 1959. Thus, the issue and claims of the parties as to the date and time of the typing and execution of the written assignments, Exhibits 17A and 17B, is clearly presented to you.

If you find from a preponderance of all the evidence before you that the purported written assignments being Exhibits 17A and B of the Perkins Corporations to the plaintiff Clyde Perkins were typed and executed, that is signed, by the officers named on behalf of the respective corporations at any time prior, at any time before March 2, 1959, that puts an end to your inquiry concerning the sufficiency of such written assignments or any assignments in this case. That is so, because under the facts and the [6366] law of the case, each one of these two purported written assignments, 17A and 17B, is a good and valid sufficient legal assignment of the named corporation to plaintiff if it was signed by the officers named on behalf of the respective corporation at any time prior to March 2nd, 1959.

However, in the event that you find that either one or both of the two written assignments, agreements, being Exhibit 17A and 17B, were not typed and executed—that is, signed—by the purported signers prior to March 2, 1959, then you must disregard such purported written assignments as it would not meet the requirements of the necessary assignment here. In that event you should then consider the plaintiff's alternate claim of an oral assignment of the two causes of action against Standard by the two Perkins corporations, respectively, to the plaintiff Clyde Perkins. In this connection, you are instructed that a cause of action is a legal relationship—a claimed right to recover something legally—or an intangible

thing. A transfer of a cause of action from one person to another is purely a matter of mind or intent on the part of the person making the transfer to make it, and also on the part of the person to whom it is transferred, whether to accept. It requires mutuality, a meeting of the minds. So it follows that it is for you to determine from all of the evidence before you, considered together with all reasonable inferences arising [6367] from the proven statements and conduct of the principal parties, whether either or both of the Perkins corporations, acting through any officers or officer determined by you to have policy-making or executive authority over the affairs of such corporation, had the mind or intention to assign or transfer its corporate cause of action against defendant Standard to the plaintiff Clyde Perkins and whether the plaintiff Clyde Perkins had the intent to accept such assignment and transfer at any time prior to March 2, 1959.

If you find that there was no such oral arrangement or transfer of either or both of the two corporate causes of action to the plaintiff Clyde Perkins, then you must disregard such claim of oral assignment and conclude that there was no necessary assignment from such corporation.

If, however, you find from a preponderance of all of the evidence before you that either or both of the Perkins corporations did have such a corporate officer mind or intention to and did assign or transfer its cause of action against defendant Standard to plaintiff Clyde Perkins and that the plaintiff had the intention to accept and did accept all prior to the institution of this action on March 2, 1959, then you must conclude that an oral arrangement of assignment of such corporations' cause of action to the plaintiff, as required under these instructions was made and accomplished.

[6368] Now as for Standard's claimed "good faith meeting competition" defense.

Members of the jury, you will recall that when I instructed under what state of the plaintiff Clyde Perkins'

proof you might and must return a verdict or verdicts in favor of Clyde Perkins on claimed price discrimination, now that is claimed price discrimination only, not the furnishing or payment for services and facilities, so I repeat, in favor of Clyde Perkins on claimed price discrimination, I added—unless and only if the defendant Standard has established and proved by a preponderance of all of the evidence before you its defense of “good faith meeting competition” on which I shall later instruct you more fully. We have now reached that stage.

In connection with this claimed defense, Standard contends that to the extent that it extended to Signal Oil and Gas Company a lower price on gasoline than the amount payable by Clyde A. Perkins to Standard for gasoline delivered, such lower price was extended by Standard in good faith and in the reasonable belief that it was thereby meeting the equally low or still lower price offered Signal Oil and Gas Company by one or more of Standard’s competitors.

This contention seeks to invoke this following provision of the Robinson-Patman Act: It says, “Upon proof being made on a complaint under the act, that there has been [6369] discrimination in price, the burden of rebutting the prima-facie case thus made by showing justification thereof shall be upon the person charged with a violation of this section, by affirmatively showing that his lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor.

It now appears that the evidence in this case is undisputed and that defendant Standard admits that Standard offered a lower price on both ethyl and regular gasoline to Signal Oil and Gas Company after December 31, 1956 than it did to plaintiff Clyde Perkins. Therefore, the plaintiff has proven that there has been price discrimination. However, even if the plaintiff in this case has shown all of the statutory elements making out such a price discrimination violation, the law just read to you allows

a defendant to justify the price differential by affirmatively showing that the lower price which is shown to have been discriminatory was extended by the defendant in good faith to meet the equally low price offered by a competitor.

I will now instruct you on the facts and conditions which must be affirmatively shown to establish this so-called good faith meeting competition defense.

Before the defense of good faith meeting of competition may be used by the defendant under the provisions of the law, there must have been a definite offer which was extended [6370] by a competitor of defendant Standard to a customer of defendant and defendant must have been aware of such offer and must have acted in good faith in meeting such competitive offer. Therefore Standard cannot use this defense unless it knew or was given to reasonably believe while acting in good faith that its customer, Signal Oil and Gas Company, did in fact receive a competitive offer from another potential supplier for like products under similar circumstances, and on or before the time Standard's lower price was extended to Signal Oil and Gas Company and Standard then acted in good faith in meeting such competitive offer.

[6371] The Court: (Continuing) So I instruct you specifically that if defendant Standard has proved to your satisfaction by a preponderance of all the evidence in the case that in selling gasoline to Signal Oil and Gas Company at a lower price than the amount paid to the same type of gasoline by plaintiff Clyde Perkins, it did so either in good faith to meet the equally low price offered Signal Oil and Gas Company by a competitor of Standard, or it did so in good faith and in the reasonable belief that by so lowering its price to Signal Oil and Gas Company, it was actually meeting a competitive offer made to Signal Oil and Gas Company.

Defendant Standard has justified its pricing to Signal Oil and Gas Company, and the plaintiff cannot recover damages in his action because of any such lower price ex-



tended to Signal Oil and Gas Company regardless of any injury which he or Perkins of Oregon and Perkins of Washington may have suffered by reason of such lower price.

Now, members of the jury, as to the category—as to the proper measure of damage, ladies and gentlemen, in the event that you find and do return a verdict in favor of plaintiff Clyde Perkins, in which the defendant Standard on any one or more of the three causes of action, it then becomes your duty to determine and fix the amount of damage plaintiff is entitled to recover from the defendant Standard on such one or more of the three causes of action.

[6372] You may bear in mind that my giving you this instruction as to the proper measure and method of determining and fixing the amount of damage if any, is not to be construed by you as any indication that in my opinion the plaintiff is or is not entitled to recover damage, but only to decide and direct you as to the proper measure and method of determining and fixing the amount of damage in the event you find that plaintiff is entitled to recover some amount of damage.

At the outset in determining whether plaintiff Clyde Perkins and Perkins of Oregon or Perkins of Washington was injured in their respective business or properties by reason of any discrimination by Standard, and if you find that they or any of them were so injured in determining the damage of property to be awarded to compensate for such injury, you must keep in mind the question for your determination is not how much better off plaintiff Clyde Perkins or Perkins of Oregon or Perkins of Washington would have been if they had received any advantage which defendant may have extended to other purchasers of gasoline but solely how much worse off they were and are because others received such advantage.

In determining the amount of damage, if any, on the basis of the evidence before you which was suffered by the plaintiff Clyde Perkins or the two Perkins corporations or any of them by reason of any discrimination, you may con-



sider [6373] the following factors as claimed by the plaintiff but only so far as you will find that they apply—as you shall find from a preponderance of all of the evidence before you that they apply to Clyde Perkins individually or the two corporations or separately.

*One.* The amount of price differential on gasoline sold by the defendant Standard to plaintiff Perkins on the one hand and the so-called favored competitors Signal Oil and Gas Company and Chevron and Signal dealers or any of them on the other hand.

*Two.* The loss of profit on the volume of gasoline sales which the plaintiff estimates and claims were lost by reason of such discrimination, if any, to the extent that they are supported by reasonable data.

*Three.* The loss of profit estimated on the volume of fuel oil sales and claimed by such discrimination, if any, as far as they are supported by reasonable data.

The so-called rest room and maintenance allowances and the furnishing of credit card services.

The decrease, if any, in the going concern value of the business by reason of the claimed discrimination with respect to stations owned and leased by the plaintiff Clyde Perkins and stations leased by Perkins of Washington [6374] or Perkins of Oregon, or either of them, and the decrease in depreciation, if any, in the going concern value of the fuel oil business of the plaintiff Clyde Perkins and of Perkins of Oregon and Perkins of Washington, or either of them.

Any payments, subsidies, or allowances not reflected in other factors taken into consideration by you of which you find on the basis of the evidence before you were payments by Standard Oil to Signal Oil and Gas Company and Chevron and/or Signal dealers, or any of them, which were not available on proportionately equal terms to plaintiff Clyde Perkins or either of the two Perkins corporations or any of them in accordance with these instructions.

Also, any services or facilities furnished or agreed to be furnished by defendant Standard to Chevron or Signal dealers which were not accorded to plaintiff Clyde Perkins and the two Perkins corporations, or either of them, upon proportionately equal terms in accordance with these instructions.

Now, of course, members of the jury, you must bear in mind that plaintiff Clyde Perkins and Perkins of Oregon and Perkins of Washington, or any of them, cannot recover on the same element of damage more than once.

I should instruct you that as a matter of law you cannot compute damages by merely taking the difference [6375] between the price alleged to have been paid by Clyde Perkins or by the two Perkins corporations or any of them for gasoline to Standard and the price charged the most favored purchaser from Standard and by then multiplying the number of gallons which Standard supplied to them by this difference.

The law allows you coverage only for damages actually sustained by reason of the violation of the Act, and therefore the mechanical price difference as such in and of itself is not the proper measure of damage from the facts in this case.

Members of the jury, you are further instructed that if you find from a preponderance of all of the evidence in the case that first went to any discrimination by defendant Standard, plaintiff Clyde Perkins, Perkins of Oregon or Perkins of Washington, or either of them, was unable to carry on their respective businesses and that such violation caused plaintiff Clyde Perkins or Perkins of Oregon or Perkins of Washington, or either of them, any damage, then plaintiff Clyde Perkins or the two Perkins corporations, respectively, or any of them, is entitled to have its damage estimated and determined by you based on probable and inferential proof as well as direct and positive proof as long as it is supported by the evidence from concluding reasonable data.

[6376] In this connection, if you find that Clyde Perkins and Perkins of Oregon or Perkins of Washington lost customers or lost sales to customers by reason of any act of discrimination by Standard, the damage which you may award for such losses or loss of business or losses of sale are the net profits which Clyde Perkins or Perkins of Oregon or Perkins of Washington, respectively, or any of them, could have reasonably expected to derive for a continuation of their customer relationship.

You were instructed as a matter of law plaintiff cannot recover gross profits lost due to loss of customers or loss of sales but must take into account the expenses which Perkins of Oregon and Perkins of Washington and Mr. Perkins himself would have reasonably had incurred in making such sales by the respective concerns.

In this regard, you may consider the books and the records of plaintiff Clyde Perkins and the two Perkins corporations, or any of them, and the expert testimony you have heard to determine the loss of the potential profits suffered by either of these parties who are no longer able to continue in business or for whom the business has declined as a result of any discrimination by Standard as found by you; and also any lessening of the going concern value or good will value of the businesses of Clyde Perkins or the two Perkins corporations, or either of them, based [6377] among other things on past profits and performance of these businesses, respectively, as shown in the evidence, and the testimony to your satisfaction.

In connection with your consideration of damages on account of any loss and going concern value or good will value, you are instructed that before any recovery for loss and going concern or good will value for business or property can be had, it must be first shown that the business or property involved in fact had a good will value before the alleged damage occurred.

The most important element of good will is the expectation of future profitable operations. The good will value

exists only if the reasonable expectations of future profits exceeds an amount attributable to a reasonable return on the value of physical properties and a return attributable to the labor of the owners of the business. Only if the business or the property involved has a value over and above the value allocated to the physical assets of such and to the personal services contributed by the owner of the business can a business or a property interest in a business be said to have any good will value.

Plaintiff has claimed damages as an alleged loss in the good will and going concern value of properties leased by Clyde Perkins individually and Perkins of Washington. Before you can determine whether any such loss occurred at [6378] all, you must find that these leasehold interests had in fact a good will value or a going concern business value prior to the alleged occurrence of the damage. In determining whether such good will or going concern value existed, you may take into account the terms of the leases under which Clyde Perkins or either of the two Perkins corporations held these properties because unless those parties, respectively, had reasonable assurance that the leasehold interests would continue for a reasonable period of time, such interests could not have any good will or going concern value.

As was just mentioned to you, the good will or going concern value of property is based primarily on the reasonable expectancy of future possible operations, you are instructed that you cannot award damage for loss of good will based on such a reasonable expectation of future profit operations and also award him damage for loss of net profits due to the loss of sale or the loss of customers because to that extent they would be implicit or making them double profits.

I must direct you to specifically disregard some items of evidence, and in this connection I instruct you that you cannot award plaintiff in this action damages based on any activities of the Fortune stations which were referred to



in the evidence, and accordingly I withdraw any and all claims of damage from that source from your consideration.

[6379] There has been some testimony by plaintiff or by his witnesses that the Regal stations in Portland advertised to the public all major credit cards accepted. You are instructed as a matter of law that there is no evidence in the record that defendant Standard had any connection or participation by Regal stations of such advertisement or such service or facility was extended by Standard to such Regal stations. Accordingly, you are instructed to disregard this testimony because it is not relevant to any issue before you in this case.

There has been some testimony by plaintiff or by his witnesses that Regal stations of Portland advertised to the public that they were selling major brand gasoline. I instruct you as a matter of law that there is no evidence that Standard had any contractual or other lawful right to prevent Regal stations from advertising in that manner.

I instruct you further that there is no evidence in the record from which you could find that Standard approved of such advertisements or had any direct dealings with Regal stations or had anything to do with the method of advertising used by Regal stations.

Accordingly, I instruct you to disregard any such testimony regarding Regal's use and advertising major brand because it has no bearing on any issue before you in this case.

[6380] In this action plaintiff has alleged that he operated a service station called "Interstate Service" within the city of Portland, Oregon.

I instruct you as a matter of law the evidence before you conclusively shows that by the middle of March, 1956, and prior to the time that the Regal station came into existence in Portland, this station called "Interstate Service" was no longer operated or supplied by Perkins of Oregon or Clyde Perkins, individually.



You are instructed as a matter of law that the plaintiff cannot recover in this action for any diminution in the value of real or personal property owned by him and leased to Perkins of Oregon or Perkins of Washington, or to independent operators or service stations or bulk plants supplied by said corporations.

Accordingly, there is withdrawn from your consideration any claims on behalf of the plaintiffs in that respect.

So, members of the jury, it is the duty of all persons, whether individuals or corporations, who may have suffered loss or damage to their property or business interests by a wrongful act or omission of another, to take all reasonable steps and measures that a reasonably prudent person in like circumstances would take in protecting his property or business interests and to hold out to lessen or prevent further monetary losses on account of injury or harm to his [6381] property interests. This simply means that a person injured or damaged in his property interests by another cannot again by his own failure to perform the above duty to take reasonably prudent care and steps to mitigate or hold down his resulting loss or damage.

Members of the jury, a section of the Robinson-Patman Act which plaintiff relies in this action to recover by its provision that any person who shall be injured in his business or property by reason of anything forbidden in the Antitrust Law shall recover threefold the damage by him sustained in the cost of the suit including a reasonable attorney's fees.

Members of the jury, it is your duty in this case to determine from the evidence before you and applying the instructions as to the law given to you whether plaintiff is entitled to recover any damage.

If you find that the plaintiff is entitled to recover, it is your duty to return a verdict solely in the amount of the actual damage found by you to have been sustained by plaintiff and by the two Perkins corporations, respectively, or any of them, as will thoroughly and fully compensate

him or it for the injuries sustained, no more and no less, and just that, just compensation.

It is then for the Court to deal with the law and to enter judgment for the plaintiff in an amount three times [6382] the damage found by you together with reasonable attorney's fees and the costs of suit shall be determined by the Court.

[6383] The Court: (Continuing) Members of the jury, you will in no event make any finding in this case which is based on speculation or conjecture rather than on competent evidence and inferences reasonably to be drawn therefrom. It is not enough that there has been created in your minds some doubt or suspicion as to the conduct of defendant Standard. The plaintiff must prove every essential element of his claim in such a nature as carries a conviction in your minds such as would influence you in the conduct of your own business and daily affairs. This is so because in all cases the party having the affirmative of the issue has the burden of proof. So here the burden is on the plaintiff to prove every essential element of his case by a preponderance of all of the evidence. If the proof fails to establish any essential element of the plaintiff's case by a preponderance of the evidence, then you must find for the defendant Standard on that phase.

Members of the jury, under this burden of proof, the plaintiff must show by a preponderance of all of the evidence in the case that the claimed injury and resulting damage to the property and the business interest of himself, Perkins of Oregon and Perkins of Washington respectively, and the amount of such damage was approximately caused by some act or omission of discrimination on the part of the defendant Standard in violation of the act in any one or [6384] more of the particulars claimed by the plaintiff. In this connection, by way of a definition of the phrase "proximate cause", you are instructed that an injury or damage to a plaintiff is proximately caused by an act or an omission on the part of the defendant whenever it appears that the act or omission played a substantial part in

actually bringing about or causing the injury or damage and it further appears that the injury or damage was either a direct result or a reasonable, probable sequence of the act or omission. Likewise and by the same token, the burden is upon the defendant to prove every essential element of its defense of good faith meeting of competition by a preponderance of all of the evidence.

If the defendant fails to make such proof in this regard, then the defendant has failed to affirmatively establish its claimed defense.

A preponderance of the evidence means such evidence as, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds the lease that what is sought to be proved is more likely than not true.

Members of the jury, you are instructed that your power of judging the effect of the evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence. There are, [6385] generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of the case. One is direct evidence, such as the testimony of an eye witness or a party to an event, an occurrence or transaction, and such as documentary, picture, or other tangible evidence. You are expected to take into account and consider all of the evidence received in the case whether orally or in writing. There is no particular rule of law in this type of case which gives any special emphasis or importance to oral as distinguished from written testimony or the reverse. You may be more persuaded by oral testimony or you may be more persuaded by the written record. The question is one for you, and you are to determine which you believe to carry the better credence and reliability. In any event, there is no rule that one type of evidence is automatically to be preferred to another type.

The other is in direct or circumstantial evidence, the proof of a chain of circumstances which reasonably points to the existence or non-existence of certain facts. As a

general rule, the law makes no distinction between direct and circumstantial evidence but simply requires that the jury finds the facts in accordance with a preponderance of all of the evidence before you, whether it be direct or circumstantial.

Then bear in mind that the statements and the arguments [6386] of counsel are not evidence in the case unless they were made by way of an admission or a stipulation as to agreed facts. When the attorneys on both sides stipulate or agree as to the existence of the fact, we must accept the stipulation as evidence and regard that fact as conclusively proven. The evidence in this case consists of the pretrial admitted facts which were called to your attention, the sworn testimony of the witnesses for all parties, and the parties themselves, all exhibits which have been received in evidence, all facts which have been admitted or stipulated to by the attorneys in Court, and all applicable presumptions stated in these instructions. Also, any pretrial answers to the interrogatories and admissions of fact made by the parties and which have been placed before you in this case.

You will likewise regard these pretrial answers to interrogatories, admissions of fact, and agreed facts as conclusively proved. You are to consider only the evidence in the case, but in your consideration of the evidence you are not limited to the bald statements of the witnesses, the exhibits, and the stipulated to or the agreed facts. On the contrary, you are permitted to draw from facts which you have found to have been proven such reasonable inferences as being justified in the light of your own experiences.

[6387] An inference is a deduction or a conclusion which reason or common sense leads us to draw from facts which we know have been proven. A presumption is a conclusion which the law requires the jury to make from particular facts in the absence of convincing evidence to the contrary. A presumption continues in effect until overcome or outweighed by evidence to the contrary, but unless so out-



weighed, the jury are bound to find in accordance with the legal presumption. Unless and until outweighed by other evidence in this case to the contrary, the law presumes that all persons have obeyed the law, and performed their legal duties, that a witness speaks the truth, that official duty has been regularly performed, that private transactions have been fair and regular, that the ordinary course of business has been followed, that things have happened according to the ordinary course and nature and the ordinary habits of life.

You are not bound to decide any issue of fact in accordance with the testimony of any number of witnesses which do not produce in your minds belief in the likelihood of truth as against the testimony of a less number of witnesses or other evidence which does not produce such belief in your minds. The test is not which side brings the greater number of witnesses or presents the greater quantity of evidence but which witness and which evidence [6388] appeals to your minds as being most accurate and otherwise trustworthy.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves. As you were told, a witness is presumed to speak the truth, but this presumption may be outweighed by the manner in which the witness testifies; by the character of the testimony given or by contradictory evidence. You should carefully scrutinize the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, his motives and his state of mind, and the demeanor and manner while he was on the stand. Consider also any relation each witness may bear to the other side of the case, the manner in which the witness might be affected by your verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence.



Inconsistencies and discrepancies in the testimony of witnesses or between the testimony of different witnesses may or may not cause you to discredit their testimony. Two or more persons witnessing an incident or a transaction may see it or hear it differently. An innocent misrecollection like a failure of recollection is certainly not an uncommon experience to any of us. In weighing the effect [6389] of a discrepancy, consider whether it pertains to a matter of importance or an unimportant detail or whether the discrepancy results from an innocent error as from willful falsehood.

If you find the presumption of truthfulness to be outweighed as to any witness, you will give the testimony of that witness such credibility, if any, as you may think it deserves.

A witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witnesses made statements which are inconsistent with the witness' present testimony. If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you think it deserves. If the witness is shown knowingly to have testified falsely concerning any material matter, you have the right to distrust such witness' testimony in other particulars and you may reject all of the testimony of that witness or give it such credibility as you think it deserves.

You are instructed that evidence is to be estimated not only by its own intrinsic weight but also according to the evidence which it is within the power of one side to produce and of the other to contradict. Therefore, if weaker or less satisfactory evidence is offered by the party [6390] when it appears that stronger or more satisfactory evidence was within the power of the party to produce, the evidence offered should be viewed by you with distrust.

Members of the jury, both the plaintiff and the defendant have placed into the record before you many summaries,

diagrams, graphs, photographic material, maps and charts which they claim tend to show pictorially their claims, thinkings, theories and analysis of the evidence before you. So in this connection you are instructed that the testimony of accountants, photographers, analysts, and the like, and any summary, diagrams, graphs, photographic material, maps and charts prepared by any of them and admitted in evidence are competent for the purpose of explaining facts disclosed by their testimony or books of record and other documents which are in evidence. However, such charts or diagrams or summaries are not in and of themselves evidence or proof of any fact. So if you should find that such charts, diagrams or summaries do not reflect facts and figures shown by the testimony, books, records, documents or other evidence in the case, you must disregard it. That is to say such charts or diagrams or summaries are used only as a matter of convenience, and unless you find that they are true summaries of facts and figures shown by the evidence in the case, you are to disregard them entirely.

The rules of evidence do not ordinarily permit the [6391] opinion of a witness to be received in evidence. An exception to this rule exists in the case of expert witnesses. A person who by education, study, and experience has become an expert in an art, science or profession, and who is called as a witness, may give his opinion as to any such matter in which he is versed and which is material to the case. You should consider such expert's opinion and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. It is purely advisory to you. Give it the weight to which you deem it entitled; whether it be great or slight, and you may accept or reject it according to your judgment for the reasons given for it.

It is your duty to weigh the evidence calmly and dispassionately, to regard the interest of the party to the action as interests of strangers, to decide the issues upon the merits, and to arrive at your conclusions without any con-

sideration of the financial ability of one or the necessities of another, and without regard to what effect, if any, your verdict may have upon the future welfare of the parties. Jurors are officers of the Court, and act judiciously and disinterestedly and with an earnest desire to determine and declare the truth. In determining the facts as to liability and non-liability and in fixing damages, if any, you should act and deliberate impartially, without sympathy, antipathy, and pity. In doing so, you [6392] will make a mark for justice. A

Your verdict must represent the considered judgment in each juror. In order to return the verdict, it is necessary that each juror agree thereto. That is, your verdicts must be unanimous. It is your duty as jurors to consult with one another and to deliberate with the view of reaching an agreement if you can do so without violence to your individual judgment. In the course of your deliberations, do not hesitate to reexamine your own views, change your opinion in the event that it is erroneous, but do not surrender your honest conviction as to the weight or effect of the evidence solely because of the opinion of your fellow juror or for the mere purpose of returning a verdict.

When you retire to the jury room, you should elect from one of your numbers a foreman to act as your chairman throughout your deliberations and to be your spokesman in Court.

You will be supplied with these forms of verdicts. The first one in my hands reads: "We, the jury, being first duly sworn to well and truly try the above entitled cause, find our verdict in favor of the defendant Standard Oil Company of California and against the plaintiff Clyde Perkins on the alleged cause of action of Clyde Perkins individually." Then there follows two additional identical [6393] verdicts except as they apply to the alleged cause of action of Perkins Oil Company of Oregon and, the third, Perkins Oil Company of Washington. Members of the jury, if your verdict in this case be for the defendant on any one or more of the three causes of action alleged by the plain-

tiff, use this form of verdict respectively as to the cause of action involved, cause your foreman to date it and sign it and return it into Court.

The other form of verdict is entitled "Special Verdict for Plaintiff", and it reads: "We, the jury, do herewith return our general verdict in favor of plaintiff Clyde Perkins and against the defendant Standard Oil Company of California, assessing plaintiff's damage in the amount of blank dollars"—indicating a space there—"and do hereby make our special verdict dividing and apportioning the amount of the said total damage in accordance with our assessments of damage recoverable on the plaintiff's three causes of action as follows: One, we assess the plaintiff's damage on the first cause of action to Clyde Perkins individually in the amount of blank dollars. Two, we assess the plaintiff's damage on the second cause of action of Perkins Oil Company of Oregon in the amount of blank dollars. And third, we assess the plaintiff's damage in the third cause of action of Perkins Oil Company of Washington in the amount of blank dollars." Then there [6394] appears a total space, a date line and a signature line for your foreman.

Members of the jury, if your verdict in this case be for the plaintiff Clyde Perkins on any one or more of the three causes of action, cause your foreman to write in opposite the respective cause or causes of action the amount of damage that you have found that the plaintiff is entitled to recover on account of that cause of action. Then total up one or more of the three and add in the total in the amount expressed where you have returned your verdict against the defendant assessing plaintiff's damage in the amount of blank dollars.

[6395] The Court: (Continuing) Then, members of the jury, you will be supplied a third form of verdict which says general verdict for plaintiff, and it reads as follows:

"We, the jury, being first duly sworn to well and truly try the above-entitled matter, find our verdict in favor of



the plaintiff, Clyde Perkins, and against the defendant, Standard Oil Company of California, and assess the plaintiff's damage to be recovered from the defendant in the sum of (blank) dollars." A date line, and a signature line for your foreman.

So, members of the jury, it follows that if you have found a verdict and assess damage in favor of the plaintiff, Clyde Perkins, against the defendant on any one or more of these causes of action you will have filled in the blanks respectively on your special verdict for plaintiff, then whatever the total amount of that one or more of those awards be, fill that in, the total amount in your general award.

Then, members of the jury, to help the Court deal with a legal problem in the matter, I am going to ask you to make an answer to two interrogatories for the Court and they read as follows: Of course, you will write this out only in the event that you have found that plaintiff, Perkins, is entitled to recover on one or more of the causes of action. And that would be only one or more of the two [6396] corporations' cause of action. You won't be concerned with this special interrogatory in connection with any award that you might find on behalf of Clyde Perkins, individually, but in the event that you find an award in favor of plaintiff, Clyde Perkins, on either one or both of the corporate causes of action, then I will ask you to make answer to these interrogatories and they read.

"We, the jury, having resolved the issue of fact submitted to us and reached our conclusions on the substance of the alternate verdict submitted to us, now upon the request of the Court make answer to the following interrogatories submitted to us:

"1. We have found that the written assignment of the two corporations were typed and executed by the officers sometime prior to March 2, 1959, as claimed by the plaintiff," and there is a space, write in "Yes" or "no."



Now, members of the jury, depending upon what your answer to that is and depending upon whether or not you return a verdict in favor of the defendant on either one or both of the two corporate actions, you will have to deal with this No. 2. We have found that the written assignments of the two corporations were typed and executed by the officers sometime after November 1, 1961, as claimed by the defendant. Answer: Write in "Yes" or "No."

So, members of the jury, in effect, simply what that [6397] means is that if you find that the written assignments were executed in accordance with the contentions of the plaintiff on or before March 2, 1959, you will make answer "yes," and "no" to the other. If your finding in this case is that you find that the written assignments were not executed until after November 1, 1961, in accordance with the defendant's theory of the action, then you would write in answer to the question of being executed after November 1, 1961, and there would be necessarily no other answer to No. 1, because you would have answered the two of them.

I think when you view these and study them, they will be perfectly clear to you.

Now, members of the jury, the law requires before final submission of the case to you that Court and counsel have a conference concerning the instructions that the Court has just given to you. It took me longer than I anticipated that it would, but I did think it would be much better for us to go right through than for you to go to your supper and come back. It would save a lot of time.

You will now be escorted by the bailiff to have your supper and counsel and the Court will deal with this legal matter, so as soon as you come back from supper, you will be brought back into the courtroom where the case will be finally submitted to you.

Now, bear in mind at this stage of the proceedings the [6398] case has not been submitted to you yet for your

deliberations. You will have to wait the conference between counsel and the Court and then when you come back I will resolve that matter, the baliffs will be sworn, and you will be placed in their custody to deliberate upon your verdict.

#### IV. Defendant's Proposed Jury Instructions

[1780]

Revised

##### No. 12

I instruct you as a matter of law that plaintiff cannot recover in this action on account of Standard's payment or contract for the payment of anything of value to or for the benefit of a Chevron dealer or a Signal dealer as compensation or in consideration of any service or facility furnished by any Chevron dealer or Signal dealer such as restroom maintenance or cooperative advertisement, without making such payments available on proportionately equal terms to plaintiff Clyde Perkins, Perkins Oil Company of Oregon or Perkins Oil Company of Washington, because plaintiff or Perkins Oil Company of Oregon and Perkins Oil Company of Washington operated as jobbers, distributors and wholesalers of refined petroleum products and did not operate on the same functional level as Standard's branded retail dealers. Accordingly, I withdraw this issue from your consideration.

(To THE COURT: See Clayton Act § 2(d) (15 USC 13(d))

[1783]

Revised

##### No. 14

I instruct you as a matter of law that plaintiff cannot recover damages in this action on account of Standard's contracting to furnish or furnishing or contributing to the furnishing of any service or facility to any Chevron dealer or Signal dealer upon terms not accorded to plaintiff Clyde

Perkins or to Perkins Oil Company of Oregon or Perkins Oil Company of Washington on proportionally equal terms, because plaintiff or Perkins Oil Company of Oregon and Perkins Oil Company of Washington operated as jobbers, distributors and wholesalers of refined petroleum products and did not operate on the same functional level as Standard's branded retail dealers. Accordingly, I withdraw this issue from your consideration.

(To THE COURT: See Clayton Act § 2(e) (15 USC 13(e))

[1784]

No. 14A

I instruct you that before you can award damages to plaintiff on account of any services or facilities furnished by defendant Standard to any Chevron dealer or Signal dealer without making such services or facilities available to plaintiff Clyde Perkins or Perkins Oil Company of Oregon or Perkins Oil Company of Washington on proportionally equal terms, plaintiff must prove to you by a preponderance of the evidence, and you must find, that Standard's discrimination in the furnishing of such services or facilities had an adverse impact on the business of Perkins Oil Company of Oregon or Perkins Oil Company of Washington and I will hereafter instruct you on the showing required to establish that any act of Standard in violation of the statute had such an adverse impact.

(To THE COURT: See Clayton Act §§ 2(e) and 4 (15-USC §§ 13(e) and 15))

[1789]

Revised

No. 19

In order for plaintiff Clyde Perkins to recover damages for injury to the business or property of Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them by reason of any discriminatory payments

by defendant Standard for services or facilities furnished by customers, which as I have previously instructed you is at most the restroom and maintenance allowance and the cooperative advertising allowance, plaintiff must prove by a preponderance of the evidence six elements which make up such a claim. These are: (1) that these corporations were purchasers of gasoline from defendant Standard; and (2) that Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them were engaged in the business of retailing gasoline to the consuming public; and (3) that defendant Standard paid or contracted for the payment of anything of value to or for the benefit of any Chevron or Signal dealer as compensation or in consideration for any services or facilities furnished by such dealer without making such payments available to Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or either of them, on proportionally equal terms; and (4) that Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them were injured in business or property by reason of such discriminatory payments; and (5) that this injury resulted in damages in an amount which can be determined with reasonable certainty; and (6) that these corporations executed written assignments of their claims against Standard prior to the bringing of this lawsuit on March 2, 1959.

(To THE COURT: See Clayton Act §§ 2(d) and 4 (15 USC §§ 13(d) and 15))

—Defendant's

[1789-A]

Revised

No. 20

In order for plaintiff Clyde Perkins to recover damages for injury to the business or property of Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or either of them, by reason of any discrimination in the

furnishing of services or facilities connected with the sale of gasoline by defendant Standard, he must prove by a preponderance of the evidence six elements which make up such a claim. These are: (1) that these corporations were purchasers of gasoline from defendant Standard; and (2) that Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them were engaged in the business of retailing gasoline to the consuming public; and (3) that defendant Standard contracted to furnish or furnished, or contributed to the furnishing of, any services or facilities connected with the processing, handling, sale or offering for sale of gasoline to, or for the benefit of, any Chevron dealer or Signal dealer but failed to make such services or facilities available on proportionally equal terms to Perkins Oil Company of Oregon and Perkins Oil Company of Washington or either of them; and (4) that Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or either of them, was injured in business or property by reason of such discrimination; and (5) that this injury resulted in damages in an amount which can be determined with reasonable certainty; and (6) that these corporations executed written assignments of their claims against Standard prior to the bringing of this lawsuit on March 2, 1959:

(To THE COURT: See Clayton Act §§ 2(e) and 4 (15 USC §§ 13(e) and 15))

—Defendant's

[1815]

Revised

#### No. 44

There is evidence before you to the effect that Standard from time to time gave price assistance to Chevron and Signal dealers in certain areas during periods of depressed retail prices. I instruct you as a matter of law that the fact that Standard extended such price assistance to any



of these Chevron and Signal dealers and did not extend a comparable arrangement to plaintiff or to Perkins Oil Company of Washington or Perkins Oil Company of Oregon does not, in itself, constitute discrimination in price. A discrimination in price would occur only if, after taking into account price assistance payments to dealers, the net price to such dealers was lower than the net amount paid over to Standard for the same products by Clyde Perkins, or Perkins Oil Company of Oregon and Perkins Oil Company of Washington.

[1816]

No. 44A

I further instruct you as a matter of law that the fact that defendant Standard gave price assistance to Chevron and Signal dealers without offering a similar arrangement to plaintiff Clyde A. Perkins or Perkins Oil Company of Oregon or Perkins Oil Company of Washington does not constitute either a discrimination in payments for services and facilities furnished by customers within the meaning of Section 2(d) of the Clayton Act, nor a discrimination in the furnishing of services or facilities within the meaning of Section 2(e) of the Clayton Act.

[1817]

No. 44B

In determining whether a price discrimination existed, you must determine the price charged by defendant Standard for gasoline to plaintiff Clyde Perkins or to Perkins Oil Company of Oregon and Perkins Oil Company of Washington in accord with the definition of the term "net price" which I have heretofore given you. I instruct you as a matter of law that in determining Standard's net price to plaintiff Clyde Perkins or to Perkins Oil Company of Oregon or Perkins Oil Company of Washington you cannot take into account the laid-down cost incurred by Perkins Oil Company of Oregon or Perkins Oil Company of Wash-

ington, because the cost of hauling or any other cost of distribution incurred by Perkins Oil Company of Oregon or Perkins Oil Company of Washington was not a part of the price paid to Standard.

[1818]

Revised

No. 45

The evidence before you indicates that the amount which was to be paid over by plaintiff Clyde Perkins to Standard for each gallon of gasoline received from Standard was computed by deducting from Standard's posted tank truck price at the point to which such delivery of gasoline was made the applicable commission and, further, an amount equal to the common carrier freight rate covering the haul from the Standard supply terminal involved to the point of destination.

The evidence further shows that, depending on the point of destination involved, this so-called freight allowance was either reflected in the invoice or was credited to Perkins' account in the form of a month-end credit.

I instruct you as a matter of law that in determining the net price paid, or the net proceeds payable, by plaintiff Clyde Perkins to Standard for each gallon of gasoline, you must reduce such price or such net proceeds payable by the amount of this so-called "freight allowance" because it was part of the original terms under which the gasoline was delivered by Standard. Clyde Perkins, at the time of delivery, had a contractual right to this so-called freight allowance.

[1824]

No. 49

With respect to the prices charged by defendant Standard to Signal Oil and Gas Company for deliveries of gasoline at Willbridge, Oregon, I instruct you as a matter of law that the evidence before you indicates without contradiction

that such liftings commenced in the latter part of August, 1956. I further instruct you that there is no evidence which would allow you to find that during the period from August, 1956, through December 31, 1956, the price charged Signal Oil and Gas Company by Standard for gasoline delivered at Willbridge, Oregon, was lower than the price paid, or the amount accounted for, to Standard by plaintiff Clyde Perkins during that period for gasoline of the same type lifted at Willbridge. Accordingly, I instruct you that you cannot award plaintiff damages for any claimed discrimination in price in the sale of gasoline by Standard to Signal Oil and Gas Company at Willbridge, Oregon, during the period from August, 1956, to and including December 31, 1956, and I am withdrawing this issue from your consideration.

[1825]

Revised

## No. 50

The evidence before you indicates that in January of 1957 defendant Standard paid to Signal Oil and Gas Company an amount computed on the basis of the gasoline gallonage delivered by Standard to Signal Oil and Gas Company during the period from March 1, 1956 to December 31, 1956. There is no evidence before you from which you could find that Standard agreed to make such an adjustment prior to January of 1957. Accordingly, such payment, as a matter of law, could not have had an adverse competitive impact on plaintiff or on Perkins Oil Company of Oregon or Perkins Oil Company of Washington prior to January, 1957, when Standard agreed to make such payment.

[1826]

## No. 50A

The evidence before you conclusively establishes that Signal Oil and Gas Company, Western Hyway Oil Company and Regal Stations Co. are separate and distinct corpora-

tions. Accordingly, I instruct you as a matter of law that unless plaintiff has proved by a preponderance of the evidence that, after receipt of this payment in 1957, Signal Oil and Gas Company passed it on in whole or in part in some manner to Western Hyway Oil Company and that Western Hyway Oil Company in turn passed such advantage on to Regal Stations Co., you cannot find that such payment ever had an adverse competitive impact on the business or property of plaintiff or of Perkins Oil Company of Oregon or Perkins Oil Company of Washington.

[1828]

No. 54A

The evidence before you establishes that defendant Standard contracted with plaintiff Clyde Perkins as a jobber of refined petroleum products and that Perkins Oil Company of Oregon and Perkins Oil Company of Washington in disposing of the gasoline supplied by defendant Standard were engaged in business as jobbers and wholesalers of refined petroleum products. Accordingly, I instruct you that defendant Standard did not violate Sections 2(d) or 2(e) of the Act by giving restroom and maintenance allowances to Chevron and Signal dealers by making available cooperative advertising allowances to Chevron dealers or by painting the stations of its branded dealers or delivering gasoline to their stations from its bulk plants without charge, or by extending to Chevron dealers a credit card arrangement under which these dealers could have their customers charge purchases on Standard's credit cards, because Standard can reasonably classify its trade customers into wholesalers and retailers and extend different arrangements to each class of customer.

[1839]

No. 64

I instruct you as a matter of law that plaintiff Clyde Perkins cannot recover damages in this action for injury which he may have suffered as a stockholder, officer or di-

rector of Perkins Oil Company of Oregon or Perkins Oil Company of Washington, whether by a decline of the value of any stock which he may have owned in these corporations or otherwise, and the issue of any such damage is withdrawn from your consideration.

(To THE COURT: See *Martens v. Barrett*, (5 Cir. 1957) 245 F2d 844; *Bookout v. Schine Chain Theatres*, (2 Cir. 1958) 253 F2d 292; *Loeb v. Eastman Kodak Co.*, (3 Cir. 1910) 183 Fed 704; *Fleischer v. A.A.P., Inc.*, (SD NY 1959) 180 F Supp 717)

[1840]

No. 65

I instruct you as a matter of law that plaintiff Clyde Perkins cannot recover in this action for any detriment which he may have suffered by reason of the fact, if it be a fact, that Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or any other person, owed moneys to plaintiff Clyde Perkins and that there was delay in the payments of such debts owing to plaintiff or a failure to make payment in full on such debts owed to plaintiff and, accordingly, I withdraw the issue of any such damage from your consideration.

(To THE COURT: See *Loeb v. Eastman Kodak Co.*, (3 Cir. 1910) 183 Fed 704; *Westmoreland Asbestos Co. v. Johns-Manville Corp.*, (SD NY 1939) 30 F Supp 389, aff'd per curiam (2 Cir. 1940) 113 F2d 114; *Gerli v. Silk Ass'n of America*, (SD NY 1929) 36 F2d 959)

[1843]

No. 68

Plaintiff has introduced testimony in this case to the effect that he may have had some understanding either with Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or with Allen Perkins and Marvin Lennington, that he would receive some brokerage payments from the corporations or from these individuals for



turning over to the corporations the gasoline supplied by Standard under Standard's contracts with Perkins, Powell and Harris, and that no such payemnts were ever made to him. I instruct you as a matter of law that plaintiff Clyde Perkins cannot recover in this action damages for the failure by these corporations or these individuals to make any such brokerage payments, and I accordingly withdraw the issue of such alleged damage from your consideration.

(TO THE COURT: See *Robinson v. Stanley Home Products, Inc.*, (D Mass 1959) 178 F Supp 230, aff'd (1 Cir. 1959) 272 F2d 601; *Miley v. John Hancock Mutual Life Insurance Co.*, (D Mass 1957) 148 F Supp 299, aff'd per curiam (1 Cir. 1957) 242 F2d 758, cert. den. (1957), 355 US 828; *Productive Inventions v. Trico Products Corp.*, (2 Cir. 1955) 224 F2d 678, cert. den. (1956) 350 US 936; see also *United Mine Workers of America v. Osborne Mining Co.*, (6 Cir. 1960) 279 F2d 716, cert. den. (1960) 364 US 881)

[1849]

No. 73A

Before you can find that Perkins Oil Company of Oregon or Perkins Oil Company of Washington were injured in business or property by any restroom or maintenance allowance or any cooperative advertising allowance which Standard may have extended to its branded dealers or by reason of any services or facilities furnished by Standard to its branded dealers, plaintiff must prove by a preponderance of the evidence: (1) that retail stations operated by Perkins Oil Company of Oregon or Perkins Oil Company of Washington or by persons supplied by these corporations directly or through distributors lost customers to Chevron stations or Signal stations because of the discriminatory advantage possessed by such Chevron or Signal stations; or (2) that Perkins Oil Company of Oregon or Perkins Oil Company of Washington lost profits on sales of gasoline to customers because of additional expen-

ditures or reductions in the price of gasoline to such customers required to help these customers retain their retail customers against the competition of Standard's branded dealers to whom such payments were made or such services or facilities were furnished.

[1851]

Revised

No. 75

I instruct you as a matter of law that there is no evidence in the record from which you could find that Signal Oil and Gas Company itself was a competitor of Perkins Oil Company of Oregon or Perkins Oil Company of Washington. By this I mean that there is no evidence in the record from which you could find that Signal Oil and Gas Company itself solicited customers of Perkins Oil Company of Oregon or Perkins Oil Company of Washington. Accordingly, plaintiff must prove by a preponderance of the evidence that a purchaser from Signal Oil and Gas Company such as Western Highway Oil Company was a competitor of Perkins Oil Company of Oregon or Perkins Oil Company of Washington, or a customer of either of these companies. In order to recover for injury on these levels of competition, plaintiff must show by a preponderance of the evidence that any price advantage which Signal Oil and Gas Company may have enjoyed was passed on by it to the purchaser such as Western Highway Oil Company who was the competitor of the Perkins corporations or their customers. If you find that the price charged by Signal Oil and Gas Company to its purchaser such as Western Highway Oil Company was higher than the proceeds or price payable to Standard by Clyde A. Perkins, then you must find that neither Clyde A. Perkins nor Perkins Oil Company of Oregon nor Perkins Oil Company of Washington were injured by the lower price charged Signal Oil and Gas Company by Standard.

[1852]

No. 76

Plaintiff has claimed that a customer of Perkins Oil Company of Washington, Les Carter Tire Service, was taken away by Ben Harris, a purchaser from Signal Oil and Gas Company. The evidence before you conclusively shows that from September or October of 1955 on, Les Carter Tire Service received its supply of gasoline from Westway Petroleum Company, a subsidiary of Union Oil Company of California, and took no gasoline from either Perkins Oil Company of Washington or Ben Harris. I specifically instruct you that plaintiff cannot recover in this action damages for the loss of the Les Carter account to Westway.

[1853]

No. 77

Plaintiff has claimed that prior to the loss of the Les Carter account to Westway he lost sales of gasoline because Les Carter purchased at a lower price from Ben Harris, a customer of Signal Oil and Gas Company. I instruct you as a matter of law that the evidence before you conclusively shows that Les Carter was operating in Centralia and in Seattle and that Perkins Oil Company of Washington did not at any time market defendant Standard's gasoline in Seattle. I further instruct you that plaintiff has failed to show that Ben Harris made sales to Les Carter in Centralia, which is the only area in which Perkins Oil Company of Washington was making sales to Les Carter of Standard's gasoline. Accordingly, I instruct you as a matter of law that plaintiff cannot recover in this action damages for any losses of sales by Perkins Oil Company of Washington to the Les Carter account, and I am withdrawing this issue from your consideration.

[1854]

No. 78

There is evidence before you from which you can find that Perkins Oil Company of Oregon or Perkins Oil Company of Washington, at various times, purchased petroleum

products from suppliers other than defendant Standard. I instruct you as a matter of law that even if you find that Perkins Oil Company of Oregon or Perkins Oil Company of Washington lost sales to a favored purchaser of Standard or to a customer from a favored purchaser of Standard to whom any price or other advantage was handed on, you must nevertheless find for defendant Standard on that issue unless plaintiff has proved by a preponderance of the evidence that at the time such loss in sales occurred, Perkins Oil Company of Oregon or Perkins Oil Company of Washington was supplying the customer involved with gasoline supplied by Standard, and not with gasoline supplied by by a competitor of Standard.

I specifically instruct you that plaintiff cannot recover damages for the loss of the Les Carter account in Seattle, because the evidence shows that Perkins Oil Company of Washington supplied Les Carter at Seattle with Union gasoline and not with gasoline supplied by defendant Standard.

[1855]

No. 79

I instruct you as a matter of law that there is no evidence before you from which you could find that gasoline supplied by Standard to Signal Oil and Gas Company competed with Standard gasoline supplied to plaintiff Clyde Perkins or to Perkins Oil Company of Oregon or to Perkins Oil Company of Washington until the opening of the Regal stations in Portland in the fall of 1956, and I withdraw from your consideration any claim of damages related to Standard's dealings with Signal Oil and Gas Company at a prior time.

[1857]

No. 81

Because of the many economic factors which in the normal course of events affect the success of a commercial enterprise, the law does not allow the tracing of an adverse competitive effect attributed to a price discrimina-

tion to a level below that of the customer of the favored purchaser.

Accordingly, I instruct you that even if you find that defendant Standard has discriminated in price against plaintiff or against Perkins Oil Company of Oregon or Perkins Oil Company of Washington, and even if you further find that Perkins Oil Company of Oregon or Perkins Oil Company of Washington's business was indirectly injured thereby, you must nevertheless find for defendant Standard unless plaintiff has proved by a preponderance of the evidence that the competitive impact from which such injury resulted occurred at the level of competition with the favored purchaser from defendant Standard or with a customer of such favored purchaser to whom such discriminatory advantage was handed on.

(To THE COURT: See Clayton Act, § 2(a) (15 USC § 13(a)); *Klein v. Lionel Corporation*, (3 Cir. 1956) 237 F2d 13, 15)

[1858]

Revised

No. 82

Plaintiff in this action contends that Perkins Oil Company of Oregon and Perkins Oil Company of Washington were injured by reason of certain marketing activities of Regal Stations Co. which operated retail stations in Portland and that said stations sold gasoline supplied by defendant Standard. The evidence before you shows without contradiction that the supply of Regal stations in Portland originated in defendant Standard's sales of gasoline to Signal Oil and Gas Company which in turn resold such gasoline to Western Hyway Oil Company which again in turn resold such gasoline to Regal Stations Co. which operated such stations. The evidence further shows conclusively that Signal Oil and Gas Company, Western Hyway Oil Company and Regal Stations Co. were separate legal entities dealing with each as separate legal entities. I instruct you as a matter of law that plaintiff cannot re



cover damages in this action for injury to his business or property or to the business or property of Perkins Oil Company of Oregon and Perkins Oil Company of Washington which is attributable to any act on the part of Regal Stations Co. since Regal was neither a purchaser from defendant Standard, nor a purchaser from a purchaser from defendant Standard.

(To THE COURT: See Clayton Act § 2(a) (15 USC § 13(a)); *Klein v. Lionel Corporation* (3 Cir. 1956) 237 F2d 13, 15)

[1859]

Revised

No. 84

In this action plaintiff claims, and some of his witnesses have testified, that the opening of the Regal stations in the fall of 1956 in Portland depressed the general level of retail prices at service stations in Portland and vicinity. I instruct you as a matter of law that even if this testimony is true, you cannot find that any act or price of Standard could have proximately caused the depressed retail prices attributed to Regal's marketing practices, because at the time of Regal's opening and during the remaining months of Regal's operations in 1956 Signal Oil and Gas Company did not have a price advantage over plaintiff Clyde Perkins or Perkins Oil Company of Oregon or Perkins Oil Company of Washington. Therefore, you cannot award plaintiff damages for any injury which he attributes to the activity of Regal stations.

[1862]

No. 86

I instruct you that under the antitrust laws it would have been illegal for Standard to attempt to control the prices at which Regal stations sold gasoline to the public, or to control the use by Regal of advertisements, giveaways, price signs or other marketing methods which Regal stations are alleged to have employed. Unless plain-

tiff has shown by a preponderance of the evidence that a price advantage was given to Signal Oil and Gas Company by Standard, and that this price advantage proximately caused, or substantially contributed to, the adoption by Regal of those marketing methods which are claimed to have injured the business of Perkins Oil Company of Oregon or Perkins Oil Company of Washington, plaintiff cannot recover for any such alleged injury. You cannot award plaintiff damages merely because Regal marketed gasoline manufactured by Standard by use of marketing methods which adversely affected the retail gasoline prices in the Portland area, and thus caused losses to plaintiff or to Perkins Oil Company of Oregon or to Perkins Oil Company of Washington.

[1870]

No. 92A

Plaintiff has submitted to you in the form of Exhibits 82E, 82F, 82J, 82K, 82L and 82M certain computations of the amount of damage which he claims was sustained by him and by Perkins Oil Company of Oregon and by Perkins Oil Company of Washington. Each of these schedules assumes that Perkins Oil Company of Oregon and Perkins Oil Company of Washington had a reasonable expectation of increasing its sales of gasoline by 10 per cent each year during the years 1955, 1956 and 1957. I instruct you as a matter of law that there is no evidence before you which would allow you to find that a 10 per cent annual increase in volume was a reasonable expectation for the sales of these two corporations and I instruct you that you cannot award plaintiff damages in an amount reflecting such an assumed 10 per cent increase in the sales volume of these corporations.

[1873]

No. 93A

I instruct you as a matter of law that plaintiff cannot recover damages in this action by reason of any alleged loss of sales of fuel oils by Perkins Oil Company of Oregon

or Perkins Oil Company of Washington unless he has shown by a preponderance of the evidence that these corporations, or either of them, sold gasoline and fuel oils to a customer, and the corporation lost the gasoline business of such customer to Signal Oil and Gas Company or to a customer from Signal Oil and Gas Company by reason of lower prices offered to this customer, and that as a result of such loss of such gasoline sales the corporation also lost the fuel oil business of such former customer.

[1874]

No. 93B

Plaintiff in this action has claimed an amount of damages attributed by him to an alleged loss of sales of furnace oil, stove oil and other fuel oils or to an alleged decline in value of the fuel oil business of Perkins Oil Company of Oregon and Perkins Oil Company of Washington based on a claimed decline of such fuel oil sales. I have heretofore instructed you that there is no evidence before you that defendant Standard has discriminated in the sale of these products. Accordingly, plaintiff cannot recover any damages on account of lost fuel oil sales unless he has proved that defendant Standard discriminated in the sale of gasoline and that losses of sales of gasoline attributable to such discrimination necessarily caused a loss of sales of fuel oils.

I instruct you further that even if you find that losses of fuel oil sales occurred and were proximately caused by defendant's discrimination in the sale of gasoline, you cannot award plaintiff damages in excess of the net profits which Perkins Oil Company of Oregon and Perkins Oil Company of Washington could reasonably have expected from such lost fuel oil sales, and in no event can you award damages for loss of any prospective net profits for a period beyond December, 1957.

(To THE COURT: Authority for last paragraph, limiting recovery for loss of prospective profits to contract period: *Western Oil & Fuel Company v. Kemp* (8 Cir. 1957) 245

F2d 633; *Alexander v. Texas Company* (WD La 1957) 149 F Supp 37); *Chevrolet Motor Co. v. McCullough Motor Co.* (9 Cir. 1925) 6 F2d 212; *In re Petroleum Carriers Co.* (D Minn 1954) 121 F Supp 520; *Pecarovich v. Becker* (1952) 113 Cal App2d 309, 248 P2d 123; *Fife v. Great Atlantic & Pacific Tea Co.* (1950) 166 Pa Super 77, 70 Atl2d 369, cert den (1950) 340 US 837).

Defendant's

[1881]

No. 98A

I instruct you as a matter of law that plaintiff cannot claim damages in this action on the basis of a computation such as is reflected in plaintiff's Exhibits 82C and 82D by taking the price paid by Signal Oil and Gas Company to Standard for gasoline at Willbridge from and after August 27, 1956, when such sales commenced, and project it backwards in time into the first part of 1956 and into 1955 and claim damages on account of such differential on the gallonage which Standard supplied him during the period from March 2, 1955 to August 27, 1956, because during that period there were no sales at Willbridge to Signal Oil and Gas Company.

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**V. Defendant's Objections to Instructions**

See X.C, pp. 456-477, *infra*.

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**VI. Special Interrogatories to the Jury**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

**SPECIAL INTERROGATORIES TO THE JURY**

We, the jury, having resolved the issues of fact submitted to us and reached our conclusions on the substance of the alternate verdict submitted to us, now, upon the

request of the Court, make answers to the two following interrogatories submitted to us:

**Interrogatory No. 1**

We have found that the written assignments of the two corporations were typed and executed by the officers sometime prior to March 2, 1959, as claimed by the plaintiff.

Answer: YES

(Write in "yes" or "no".)

**Interrogatory No. 2**

We have found that the written assignments of the two corporations were typed and executed by the officers sometime after November 1, 1961, as claimed by the defendant.

Answer: NO

(Write in "yes" or "no".)

Dated December 20, 1963.

/s/ DAVID B. ANDERSON  
Foreman

**VII. Special Verdicts for Plaintiff**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

**SPECIAL VERDICTS FOR PLAINTIFF**

We, the jury, do herewith return our general verdict in favor of the plaintiff Clyde Perkins and against the defendant Standard Oil Company of California, assessing plaintiff's damage in the amount of \$336,404.57 and do hereby make our special verdicts dividing and apportioning the amount of said total damage in accordance with



our assessment of damage recoverable on the plaintiff's three causes of action as follows:

- |  |                          |
|--|--------------------------|
| 1) We assessed the plaintiff's damage on the first cause of action of Clyde Perkins individually in the amount of        | <u>\$185,022.52</u>      |
| 2) We assessed the plaintiff's damage on the second cause of action of Perkins Oil Company of Oregon in the amount of    | <u>\$ 84,101.14</u>      |
| 3) We assessed the plaintiff's damage on the third cause of action of Perkins Oil Company of Washington in the amount of | <u>\$ 67,280.91</u>      |
| Total  | <u><u>336,404.57</u></u> |

Dated this 20th day of December, 1963.

/s/ DAVID B. ANDERSON  
Foreman

#### VIII. General Verdict for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

#### GENERAL VERDICT FOR PLAINTIFF

We, the jury, being first duly sworn to well and truly try the above-entitled matter, find our verdict in favor of the plaintiff Clyde Perkins and against the defendant Standard Oil Company of California and assess the plaintiff's damage to be recovered from the defendant in the amount of \$336,404.57.

Dated this 20th day of December, 1963.

/s/ DAVID B. ANDERSON  
Foreman

IX. Opinions of the United States Court of Appeals  
for the Ninth Circuit

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,436

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,  
*Appellant,*

VS.

CLYDE A. PERKINS, *Appellee.*

[July 11, 1968]

ON MOTION FOR CLARIFICATION

Before: HAMLEY, KOELSCH and DUNIWAY, Circuit Judges.

In response to Perkins' Motion for Clarification, we make the following amendments to and of the opinion: Immediately preceding the final paragraph is inserted a new paragraph reading:

"In view of the outcome of this appeal, all questions concerning attorneys' fees shall await final disposition of the litigation in the district court or this court."

In addition, the final paragraph is amended to read:

"The judgment is reversed and the cause remanded for a new trial on both liability and damages (including the submission of additional or different evidence pertaining thereto), consistent with the views expressed in this opinion. On the matter of liability, however, since Standard has not questioned the trial court's ruling that Perkins and the Perkins corporations were purchasers within the meaning of the Clayton Act, the contention that Perkins was a consignee for commercial purposes and not a purchaser, will not be available to Standard on retrial."

## UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,436

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,  
*Appellant,*

vs.

CLYDE A. PERKINS, *Appellee.*

[July 11, 1968]

## ON PETITION FOR REHEARING

Before: HAMLEY, KOELSCH and DUNIWAY, Circuit Judges.

Perkins' petition for rehearing is denied. Essentially it is nothing more than a repetition of arguments concerning assignments, which we are satisfied were all adequately considered and correctly passed upon by our written opinion. However, one particular point is not unworthy of brief current comment.

Because Perkins or the Perkins corporations operated or were interested in a few retail service stations, in addition to the wholesale distribution which comprise by far the greater part of their business, we believe it useful to point out that on retrial any recovery on their 2(d) and 2(e) claims for allowances and services proportional to any Standard made to its branded dealers on the retail level should not reflect Perkins' wholesale distribution.

The validity of our cautionary observation that under section 2(d) and its companion 2(e) a seller's obligation for such matters is limited to customers who compete with each other on the same level of distribution is in no wise weakened by the Supreme Court's recent reversal of F.T.C. v. Fred Meyer, Inc., 359 F.2d 351 (9th Cir. 1966) reversed 390 S. Ct. 341 (1968), the decision upon which we relied.

To the contrary, its validity is finally confirmed and settled beyond dispute, for in *Meyer* the Court opined:

"We cannot assume without a clear indication from Congress that § 2(d) was intended to compel the supplier to pay the allowances to a reseller further up the distributive chain who might or might not pass them on to the level where the impact would be felt directly. We conclude that the most reasonable construction of § 2(d) is one which places on the supplier the responsibility for making promotional allowances available to those resellers who compete directly with the favored buyer." (p. 357).

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,436

STANDARD OIL COMPANY OF CALIFORNIA, a corporation,  
*Appellant,*

VS.

CLYDE A. PERKINS, *Appellee.*

[November 2, 1967]

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

Before: HAMLEY, KOELSCH and DUNIWAY, Circuit Judges.

KOELSCH, Circuit Judge.

Clyde A. Perkins brought this suit against the Standard Oil Company of California to recover treble damages for injuries allegedly resulting from Standard's price and

price-related discriminations in the sale of gasoline and oil in violation of Section 2(a), (d) and (e) of the Clayton Act, as amended by the Robinson-Patman Act.

At the conclusion of a protracted trial, the jury rendered its verdict for Perkins and against Standard, assessing damages in the total sum of \$336,404.57.<sup>1</sup>

The court trebled this award and allowed Perkins \$289,000 as an attorney's fee (15 U.S.C. § 15) for a total of \$1,298,213.71. Standard has appealed.

Perkins started in the gasoline and oil business during 1938 as the proprietor of a single service station in the State of Washington. Over the years he acquired many more stations throughout that State and a number in Oregon. In addition, he became a wholesaler in this same territory. There he operated several bulk storage plants and sold gasoline to other wholesalers, to retailers, and to commercial users. In 1945 Perkins, together with two other dealers whose operations were similar to his own, entered into the first of a series of so-called "consignment supply contracts" with Standard, under which Standard sold them all the gasoline and oil which they required. None of the three was interested in the business of any other.

During 1952 Perkins organized two corporations—Perkins of Oregon and Perkins of Washington—to whom he respectively sold his gasoline and oil business and leased

<sup>1</sup> The form is denominated "special verdict." In it the above sum, referred to as the amount of the "general verdict," is divided into three parts, each labeled "special verdict"; each part is allocated to a particular claim as follows:

- |  |              |
|--|--------------|
| "(1) . . . on the first cause of action of Clyde Perkins individually      | \$185,022.52 |
| "(2) on plaintiff's second cause of action of Perkins Oil Co. of Oregon    | 84,101.14    |
| "(3) on plaintiff's third cause of action of Perkins Oil Co. of Washington | 67,280.91    |



all his bulk plants and most of his service stations. The corporations continued to carry on a wholesale business but sublet all service stations, save for one operated by Perkins of Washington in Vancouver, Washington. Standard knew of these transactions but did not negotiate sales contracts with the corporations or terminate the existing one with Perkins. It continued to supply the gasoline and to bill Perkins.

On December 2, 1957 the Perkins businesses were sold to a major oil company and the contract with Standard was terminated.

Fifteen months later, on March 2, 1959, Perkins filed this suit. As ultimately submitted to the jury it comprised three claims: the first, that of Perkins individually; the second, that of Perkins of Oregon; and the third, that of Perkins of Washington.

Broadly stated, Perkins' contention was that throughout a period extending from March 1, 1955, through December 1957, he and the two Perkins corporations sustained injury to business and property because (a) Standard had charged the Signal Oil & Gas Co., and the operators of Standard's Chevron and Signal Service Stations (hereinafter referred to as "Branded Dealers")<sup>2</sup> less for the same grade and quality of petroleum products than Standard had charged him and the two Perkins corporations; (b) Standard had paid the Branded Dealers, but not him and the two Perkins corporations, for services and facilities furnished by the Branded Dealers in connection with the sale of Standard's products; and because (c) Standard likewise furnished said Branded Dealers valuable services not rendered to him

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<sup>2</sup> This is the term applied in the trade to proprietors of retail service stations whom standard authorized to use its brand names in their advertising.

and the two Perkins corporations.<sup>3</sup> He did not contend that his alleged injury resulted from his inability to compete with Standard itself but rather that his injury stemmed from Standard's price favoritism to Signal and the Branded Dealers, which favoritism impaired and destroyed competition between Perkins and certain others of those who sold Standard's products.<sup>4</sup>

The Branded Dealers purchased gasoline and oil from Standard which they in turn sold at retail. With respect to them, Perkins' story is quickly told. Because of Standard's favoritism and discrimination they were able to and did offer lower prices and better services and facilities than Perkins in marketing at retail.

Signal Oil & Gas Co., like Standard, featured in this litigation exclusively as a supplier. It assertedly passed

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<sup>3</sup> The relevant provisions of the Robinson-Patman Act, relied upon by Perkins, are contained in Section 2(a), (d) and (e); they make it unlawful for:

Sec. 2(a) "any person engaged in commerce . . . to discriminate in price between different purchasers of commodities of like grade and quality . . . where the effect of such discrimination may be substantially to lessen competition . . . with any person who . . . knowingly receives the benefit of such discrimination or with customers of any of them;"

Sec. 2(d) "for any person engaged in commerce to pay . . . a customer . . . for any services or facilities furnished by . . . such customer in connection with . . . the offering for sale of any products . . . sold . . . by such person unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities," and

Sec. 2(e) "for any person to discriminate in favor of one purchaser against another purchaser . . . of a commodity bought for resale . . . by . . . furnishing . . . any services . . . connected with the handling, sale, or offering for sale of such commodity not accorded to all purchasers on proportionally equal terms."

<sup>4</sup> Hereinafter, the name "Perkins" includes Perkins individually and also the two Perkins corporations.

on to its customers a large part of the more favorable price that it received from Standard and thus enabled its customers (some of whom were retailers and others jobbers) to undersell Perkins.

Section 2(a) of the Act, in terms, limits the distributing levels on which a supplier's price discrimination will be recognized as potentially injurious to competition. These are: on the level of the supplier-seller in competition with his own customer; on the level of the supplier-seller's customers; and on the level of customers of customers of the supplier-seller.<sup>5</sup>

The record in this case manifests that a substantial part of the damages assessed against Standard with respect to each claim was necessarily rested upon the marketing of gasoline and oil by a corporation known as Regal Stations Company. The conclusion is also inescapable that Regal was not a customer of a customer within the purview of Section 2(a) of the Act.<sup>6</sup> It follows that the detrimental

<sup>5</sup> Mr. Rowe, in his book, "Price Discrimination Under the Robinson-Patman Act," severely questions the validity even of this so-called "third line injury concept" included in Sec. 2(a) of the Act. Saying "this esoteric doctrine appears of dubious validity today" (p. 196) the author argues:

1. That it is doubtful that a causal relationship can exist between the supplier's lower price to a favored customer and injury to competition by that customer's customer with a disfavored customer;
2. Additionally that the concept requires supplier's control over his customer's pricing; this can give rise to serious anti-trust problems of price control.

<sup>6</sup> Regal commenced to retail gasoline and oil in Portland during the summer of 1956 and soon was operating a number of service stations there. It accompanied a well publicized entry into the market with a scale of prices well below that of other retailers and persisted in undercutting other retailers. Perkins took the position, which he supported with substantial evidence, that "While there had been some price disturbances in the Portland area prior to Regal, these were . . . of 'brush fire' dimensions while Regal precipitated a major conflagration"; and he further adduced proof

effect Regal exerted upon competition is not attributable to and would not support an award of damages against Standard; that the whole verdict is tainted, since the amount reflected in it by Regal's conduct cannot be ascertained; and that the judgment must be reversed and a new trial had.

tending to show that the impact of Regal's price policy went far beyond Portland; that it precipitated and sustained a sort of chain-reaction throughout Perkins' entire marketing area, and that it adversely affected both the wholesale and retail business carried on by Perkins.

While the record shows Regal sold Standard gasoline, it also shows that Regal purchased this gasoline from Western Hyway Oil Co., which in turn had purchased it from Signal which had originally purchased from Standard. Even granting that the proof demonstrated Standard uniformly charged Signal substantially less than Perkins, and further granting that Signal likewise passed on to its customer (Hyway) this price advantage, the competition complained of was not that with Signal or Signal's customer, Hyway.

Perkins sought to bring the competition within the statutory bounds. His contention—to again quote from his brief—was that “[b]oth Western Hyway and Regal were controlled subsidiaries of S[ignal] O[il] and G[as].”

It is true that the “close community of interest” discussed in *Press Co. v. N.L.R.B.*, 118 F. 2d 937 (D.C. Cir. 1940), *cert. denied* 313 U.S. 595 (1941), existed between these three corporations: during the relevant period Signal owned 60% of the stock of Western and similarly from the outset and until October 1957, the latter corporation owned 55% of the stock of Regal. Thus Signal was in a position to exercise control over Regal. However, this fact alone is not enough. In *National Lead Co. v. F.T.C.*, 227 F. 2d 825 (7th Cir. 1955), reversed on other grounds, 352 U.S. 419 (1957) a cease and desist order against the parent corporation charged with the unlawful acts of its subsidiaries was set aside. The Court held that to establish substantial identity between parent and subsidiary corporation under the Robinson-Patman Act, more must be shown than the fact that the subsidiaries were wholly owned, that they were controlled by interlocking directors and officers and that their operations were closely correlated. The test was whether the parent exercised such complete control that the subsidiaries' corporate identity was a “mere fiction”—were the subsidiaries “mere tools” of the parent. Similarly in the *Press*



Inasmuch as the case must be returned to the district court and tried anew, we believe it appropriate to briefly comment upon several of Standard's remaining points.

The factual issues of whether or not the two Perkins corporations, prior to the commencement of this action, had assigned their claims to Perkins and whether the assignments were valid need not be relitigated. These issues were the subject of special interrogatories which the jury answered favorably to Perkins. They involved matters that were entirely distinct and separable from the claims themselves; they appear to have been fully developed by the evidence; and they are in no way affected by the error which requires a reversal of the judgment.<sup>7</sup> On the new trial the fact of the assignments will be deemed established.

*Co. case*, cited above, the D.C. Circuit—albeit in a somewhat different context—followed and applied this same basic requirement, saying “Unless, therefore, the community of interest of which we have spoken . . . is enough to wipe out and destroy the corporate structure, the Board's conclusion that Gannett Co. was equally responsible in its corporate capacity for the acts done by Press Co. in its corporate capacity cannot be sustained. Of course, it is true that Gannett Co., as owner of all the voting stock of Press Co., was in a position to dictate its action in any corporate matter, but until legislation is adopted outlawing holding companies this alone, in circumstances like these is not sufficient to annul corporate identity . . . .” (page 945). See also *Baum & Blank, Inc. v. Philco Corp.*, 148 Fed. Supp. 541 (E.D. N.Y. 1957); *Kingston Dry Dock Co. v. Lake Champlain Trans. Co.*, 31 F. 2d 265, 267 (2d Cir. 1929).

In the case before us the record reveals no substantial evidence to show that Signal in fact dictated the corporate decisions of either Western or Regal. Absent such proof, Regal must be deemed a separate and autonomous entity.

<sup>7</sup> Indeed this court has previously passed on the issue. In the related case of *Standard Oil Co. v. Perkins*, 347 F. 2d 379 (9th Cir. 1965) we affirmed the trial court's denial of Standard's motion under Rule 60(b) to set aside the judgment in that case on the grounds that the proof in this case disclosed that these same assignments upon which Perkins had relied were fraudulent and untimely.



The trial judge's ruling, that the relevant four year statute of limitations had not operated upon the assigned claims to bar Perkins' right to maintain suit on them, was correct.

We agree with Standard that if Perkins first asserted the claims on September 12, 1963 when, at the direction of the trial court he supplemented his contentions appearing in the pretrial order with the fact of the assignments, then his right to prosecute a suit on the claims had expired. The claims accrued not later than December 1957, and filing of the complaint in September 1959, would not have tolled the statute. "An amendment setting up such new . . . cause of action will not relate back to the date of the original petition, but will be governed by its own date and if the bar of the statute of limitations or a bar to the right to maintain such new cause of action has intervened, the new cause of action must fail." *Salysers v. United States*, 257 F. 255 (8th Cir. 1919). In the case last cited, the pleadings clearly disclosed that plaintiff's amendment to the complaint introduced into the suit a new claim upon which suit was barred. Here they do not. To the contrary, this record demonstrates with equal clarity that the suit from the time of its commencement included these claims. True, Perkins did not assert the claims as assigned claims, but he did make clear from the outset that he was asserting ownership of all property and property rights injuriously affected and for which he was seeking to recover damages. The supplement merely separated several claims initially improperly commingled into their component parts.

Neither did the court err in submitting to the jury Perkins' claims based upon Standard's alleged Section 2(d) and 2(e) violations. There was some evidence that Perkins and the Perkins corporations operated some service stations and, to that extent, Standard was obliged, under those sections, to make the same proportional payments and allowances to Perkins for such items as service station rest room maintenance, painting of service stations,

advertising and credit card privileges, as it did to the Branded Dealers. We perhaps should add, a seller's obligation extends only to customers who compete with each other on the same functional level of distribution. *Tri Valley Packing Ass'n. v. F.T.C.*, 329 F. 2d 694 (9th Cir. 1964). And a customer who functions both as a retailer and a wholesaler is entitled to receive proportionately equal treatment with respect to payments and services that the seller gives a competing retailer; but he is not entitled to such allowances with respect to his wholesale business as well.<sup>8</sup>

Standard's assignments also concern the trial court's rulings on evidence and the giving of instructions relating to damages. A brief discussion of several is warranted.

It will be recalled that the verdict comprised three claims: the claim of Perkins individually, and that of Perkins of Oregon, and Perkins of Washington.

With respect to Perkins' own claim the court, over Standard's objection, permitted him to show on the issue of

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<sup>8</sup> A difference of legal opinion exists over the reach of Sec. 2(d) and 2(e) obligation. See Rowe "Price Discrimination Under the Robinson-Patman Act," 1964 Supplement, p. 89. The author, however, points out on page 396 of his original text:

"... the F.T.C. 1960 guides indicate a limitation of the supplier's obligations . . . to competing 'customers' and define 'customer' as someone who buys directly from the seller or his agent or broker. This resolution of the issue properly balances the possibility of law avoidance against the practical difficulties of computing appropriate benefits accruing to wholesalers and other intermediate distributors . . . and the burdens of conditioning all suppliers promotional campaigns at the retail level on their simultaneous subsidization of other distributors along the way."

This was the view taken by this court in *Tri-Valley* and recently reaffirmed in *F.T.C. v. Fred Meyer, Inc.*, 359 F. 2d 351 (9th Cir. 1966). We note that this precise question is presently before the Supreme Court pursuant to a grant of certiorari in the *Meyer* case at the last term. 386 U.S. 907 (1967).

damages that the Perkins corporations did not pay him 1 (a) an agreed brokerage fee for securing their gasoline; (b) rentals on leases of service stations and other property, and (c) other indebtedness; (2) that he was unable to collect rentals for service stations leased to independent operators and (3) that the going concern value of his interest, as owner and lessor and as prime lessee and sublessee of service stations and bulk plants, substantially diminished.

We conclude: that items 1(a), (b) and (c) and 2 were not elements of injury properly the subject of damages, but that item 3 was. It follows that the rulings of the court were in part erroneous and in part right.

The problem is one of proximate cause. A person claiming damages must show that he was within the "target area" of the economy directly affected by the unlawful competitive practices, for "the rule is that one who is only *incidentally* injured by the violation of the antitrust laws—the bystander who was hit but not aimed at—cannot recover against the violator." *Karseal Corp. v. Richfield Oil Corp.*, 221 F. 2d 358, 363 (9th Cir. 1955); *Conference of Studio Unions v. Loew's, Inc.*, 193 F. 2d 51 (9th Cir. 1951), *cert. denied*, 342 U.S. 919 (1952).

The solution is not an easy one and admittedly there exists a difference of judicial opinion as to what constitutes a direct (as distinguished from a remote or consequential) injury to business or property within the meaning of Section 4 of the Clayton Act (15 U.S.C. §15).

*Congress Building Corp. v. Loew's, Inc.*, 246 F. 2d 587 (7th Cir. 1957), contains an exhaustive canvass of many cases coupled with an illuminating discussion of the matter. In that decision the Seventh Circuit, noting that "the courts have uniformly denied recovery to stockholders . . . creditors . . . and deposed officers of a corporation . . . who claimed injury as a result of alleged antitrust violations . . .," suggests as a reason that "[t]o permit individual stockholder recovery would run counter to the traditional

treatment of a corporate injury that the corporation is the proper party to redress corporate wrongs. And direct recovery by the individual creditor would give him a preference over other creditors of the insolvent business and such recovery may act to thwart the policy of the bankruptcy laws. Further, the number of stockholders and creditors might produce an insurmountable problem of multiplicity of suits." (pp. 590-591). However, the court went on to hold that a non-operating owner-lessor of a motion picture theatre had a recognizable claim for damages against its lessee and a third party who had conspired together to reduce the business at the theatre. The court pointed out that such a violation might cause injury to the reversion of the owner-lessor and that such an injury was one directly suffered. This court, in *Steiner v. 20th Century-Fox Film Corp.*, 232 F. 2d 190 (9th Cir. 1956), upon identical facts and using much the same reasoning, reached the same conclusion. However, in *Steiner* we noted that *Harrison v. Paramount Pictures, Inc.*, 115 F. Supp. 312 (D.C. E.D. Pa.) affirmed per curiam, 211 F. 2d 405 (3d Cir. 1954), cert. denied, 348 U.S. 828, a case in which the lessor was not permitted to maintain a suit, was not factually similar "because in *Steiner* the lessee was a party to the unlawful combination, whereas in *Harrison* the lessee was not." Standard vigorously argues that the distinction is material and that the net effect of *Steiner* is that an actionable injury can result only where a conspiracy to injure the lessor is entered into between the lessee and a third person. We disagree. In our view, while the fact that the lessee did not participate in the wrongful act might give rise to problems of apportionment of damages between lessor and lessee for their respective injuries and be urged as giving rise to multiplicity of suits, these reasons do not militate in favor of the wrongdoer. As said in *Congress Building Corp. v. Loew's, Inc.*, *supra*, (at 594) "The problem of multiplicity of suits . . . is not similar to stockholder-creditor cases where a single entity exists to redress the wrong, for here



there is no such entity. In fact, if the lessor cannot sue there will be no private redress for the defendant's wrongful acts. Furthermore, multiplicity is always present where the acts of the tortfeasor injure more than one individual."<sup>9</sup>

Many of Perkins' exhibits relating to damages treated the three Perkins businesses as one and reflected only consolidated sales, losses, etc. It was thus difficult, if not impossible, for the jury to rationally determine whether a particular business had suffered injury and if so to allocate damages amongst the three of them. In addition, such a combination of components could readily create a distorted image by making it appear, contrary to the fact, that all had been injured. So far as practicable, proof of the items of damage peculiar to one claim should always be kept separate from that of another. This is particularly true in a case as factually complicated as this one. Additionally,

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<sup>9</sup> On the basis of this reasoning, Exhibit 93-E, a chart recapitulating rentals lost by the Perkins corporations on subleases to independent operators of service stations, should not have been admitted.

However, evidence showing a decline in gasoline sales by a lessor's tenant on the leased premises was properly admitted as tending to show injury to the lessor's interest in the leased property and the monetary amount of the injury. We note that Exhibits 82-J, L, and M contain general recitals that the computation is of the "Loss in Value of Business" and "Depreciation in going concern value. . . ." Such designations could well mislead a jury; moreover, it appears that the figures included business other than that done at service stations. A lessor has no interest in the business as such and the court should make clear the purpose for which the proof may be considered. Additionally, it appears that no foundation existed for the conclusion of Perkins' expert witness (reflected in the chart) that the sales volume of the leased stations would have progressively increased each year throughout the claim period at a specified rate over the base year but for Standard's asserted discrimination. Such an estimate is competent, but only if based upon facts which fairly permit the opinion.



we note a common vice inherent in all these exhibits. The computations appearing in them were predicated in whole or in part upon the premise that Perkins was unable to compete with Regal because of Standard's price discrimination. But, as pointed out earlier in this opinion, Section 2(a) of the Act does not recognize a causal connection, essential to liability, between a supplier's price discrimination and the trade practices of a customer as far removed on the distributive ladder as Regal was from Standard. On that ground alone none of these exhibits should have been admitted into evidence.

Among the defenses urged by Standard was the one provided for in Section 2(b) of the Act. (15 U.S.C. § 13(b)). That section, in a proviso, permits a discriminating seller to rebut "the prima facie case . . . by showing that his lower price . . . to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor . . . ."

As part of its proof Standard adduced testimony from one of its officers to the effect that six months before Standard lowered its price to Signal, he was informed that a competitor, Union Oil Company, had made Signal such an offer and that Standard's reduction which followed was generated by this intelligence. The court refused as irrelevant Standard's offer of sales records from Union's files, dated several months after Standard's price reduction. Despite its *ex post facto* nature, this proof would have afforded the basis for an inference that the prices were those offered during the critical period by Union; thus the records would have served a dual purpose as direct evidence of the Union's prices and to corroborate the testimony of Standard's witness.

Standard makes a more serious objection with reference to the court's instruction on this issue. The jury was told that to establish the affirmative defense the burden was upon Standard to prove its competitor had made "a definite offer" of which it (Standard) was aware. The instruction, standing alone, was clearly erroneous, for the

Supreme Court declared in *Trade Commission v. Staley Co.*, 324 U.S. 746, 759-60 (1945) that "Section 2(b) does not require the seller to justify price discriminations by showing that in fact they met a competitive price. . . .

We agree with the Commission that the statute at least requires the seller, who has knowingly discriminated in price, to show the existence of facts which would lead a reasonable and prudent person to believe that the granting of a lower price would in fact meet the equally lower price of a competitor."<sup>10</sup>

Other assignments urged by Standard in its brief involve matters not likely to occur during the course of another trial and we therefore, in order to avoid unduly prolonging this opinion, do not discuss them. Our failure to do so, however, is not to be taken as an appellate approval of every ruling not specifically discussed herein.

The judgment is reversed and the cause remanded for a new trial consistent with the views expressed in this opinion.

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<sup>10</sup> The court also gave an instruction, requested by Standard, which correctly stated the rule.

**X. Excerpts From Transcript of Proceedings****A. Testimony**

[125]

**Clyde A. Perkins**

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

**Direct Examination****By Mr. Tilbury:**

Q. Would you state your name, please. A. Clyde Perkins.

Q. Where do you live, Mr. Perkins? A. 509 West 36th Street, Vancouver, Washington.

Q. How long have you lived in the Vancouver area? A. I've lived in the Vancouver area since 1926.

Q. Prior to that time, where did you live? A. Yakima, Washington.

Q. What occupation do you follow at the present time? A. Oil business.

Q. In what capacity? A. Well, at the present time, we're doing a little brokerage business and taking care of our real estate that we have that is used in the oil business.

Mr. Hilliard: Your Honor—

The Court: Yes.

[126] Mr. Hilliard: —excuse me, counsel. We have used a term by the witness that is not specific. When speaking of the oil business, he said, "We did this", and in this lawsuit we are involved with Clyde Perkins individually, the Perkins Oil Company of Oregon and the Perkins Oil Company of Washington, the partnership of Lennington and L. Allen Perkins.

The Court: Yes. That pinpoints it initially the necessity that counsel will have to constantly bear in mind in addressing questions that when we have the witness talking with reference to Mr. Perkins and the two corporations, that they be identified as such and that there be no use of the pronoun "We" or "They". I suppose we could use

"I" or "He", but if we do that, we are going to save a tremendous amount of waste of the record.

Mr. Tilbury: That is my intent, Your Honor.

The Court: Yes.

Mr. Tilbury: If I could get to that point.

Q. (By Mr. Tilbury) Mr. Perkins, would you trace your own experience in the petroleum business for us, please.

A. Would I trace my own experience?

Q. Yes, sir. What experience have you had personally?

A. Well, I have varied experiences in the petroleum business. I entered the petroleum business in 1928. I have been in it continuously since then as a retailer, a service station [127] operator and owner, as a distributor, and as a jobber.

Q. Could you tell us a little more specifically what you have done, starting back in 1928? A. What I have done?

Q. Yes. A. Well, I started in the petroleum business in 1928. The first thing I did was bought a service station. Then I bought a second service station. Then a few weeks afterwards—or a few months afterwards, I made a contract with a company to act as their distributor, and I distributed for that company, adding service stations by lease and by building—

Q. I think you had better identify that company for us, please. A. That company, in the beginning, was called the Sunset Oil Company. It was a—it was connected with Tidewater Associated. My first contract was with the Associated Oil Company. My contract was for Southwest Washington, and I was with them until 1945. In the State of Oregon, I operated the same operation, except I was not connected with the Sunset in the State of Oregon. I was distributor and operated retail stations, built stations, bought them, some on my own and some for the Gilmore Oil Company.

Q. Until what time, sir? A. Until 1945.

[128] Q. All right. Now, by the beginning of the war, in 1941, what sort of operation did you have, in a general

way without detailing all of the specifics? A. Well, I had a rather large operation up until the war came. After the war came on, our supplies were curtailed—very greatly curtailed, and because of the war effort, we didn't get as much gas as we wanted by far. Then in the fall of '44 or the spring of '45, I forget just which it was, the Standard Oil of New York purchased the Gilmore Oil Company, and that ended my contract with the Gilmore. The Standard Oil of New York wanted to take it over on another basis, which I thought maybe that I would do. Now, my contract with the Sunset continued right on; that is, I was without a contract. As a matter of fact, I don't know whether—as far as I can remember, I only made one contract with them, with either of the two companies. Our dealings were very satisfactory. I have no complaints.

Q. Well, I think maybe we are getting a little far afield. Now, with respect to Gilmore or Sunset, were you without supplies for any period of time? A. I was never without supplies. My supplies were curtailed during the war; that is, they were curtailed during the war as far as my stations were concerned. They gave me a considerable quantity of gasoline, which I handled for them. That went to Government agencies or to contractors who were [129] contracting for the Government, but they didn't give me a sufficient amount to sell through my regular channels.

Q. Now, after Gilmore was taken over by Standard Oil of New York, did you deal with Standard Oil of New York in any way? A. I never dealt with them any more after they had taken them over, except a very short time—well, yes, I dealt with them, I think, for about six or eight months afterwards.

Q. Standard Oil of New York, is that also called Mobile Oil Company? A. That's the Mobile, yes, sir.

Q. All right. Now, how did it come about that you entered into a contractual relationship with Standard, if you did? A. Well, I had been toying with the idea of having my own brand of gasoline, selling under my own brand, and



with an idea of building a terminal in Vancouver. I contacted a man by the name of Mr. Harris, who was also in the same business that I was in the City of Portland.

Q. What is his first name, please? A. His name is Robert.

Q. Is he now deceased? A. He is now deceased. Bob and I decided between us that we would build a terminal.

Mr. Hilliard: Your Honor, I will object to any statements or position attributed to a Mr. Bob Harris, who is now [130] deceased and who would not be subject to be available for examination.

The Court: This is just all in the nature of general background and experience—

Mr. Tilbury: Yes, sir, it is.

The Court: —of the witness. I will leave it in the record for that purpose only.

Q. (By Mr. Tilbury) Mr. Perkins, I might add that don't relate any conversation—that is Mr. Harris' part of any conversation that you might have had. You realize that would be hearsay. Just what you did and what actually happened, and not something that somebody else might have told you. A. Well, we had decided to build a terminal. And I did the preliminary work, all of the preliminary work, which would take a few months. Another party, we agreed to take them in also on the deal.

Q. Who was the other party? I think we had better—

A. The party was Wallace Truax.

Q. How far did you get with your plans on the terminal?

A. Well, we got far enough along that I had got permission from the Planning Commission. I got the permits, or got them agreed to anyway, to take an option on the properties, and I had made several trips around the country lining up tanks, storage tanks, and also making connections for supplies.

[131] Q. (By Mr. Tilbury) Now, did Mr. Harris have an independent oil company from yours? A. He did, in Portland.

Q. Have you ever operated your companies together in any sense? A. No, we never did.

Q. Under what names did he market his products? A. I believe under the name of the Harris Oil Company.

Q. What were his stations called? A. I believe they were called Veltex.

Q. What names were used on your stations? A. Up until that time my names were Gilmore in Oregon and Sunset in Washington.

Q. Did you get that far as to plan a location for the terminal? A. Yes, sir, the terminal was to be built at Vancouver, close to Terminal No. 2.

Q. Did you receive permits from the City of Vancouver to build it there? A. I got agreements from them, yes.

Q. All right, and had you arranged for a source of supply in any way? A. We hadn't definitely agreed with anyone to buy, but I had contacted three or four companies who agreed to sell us.

Q. Which companies had agreed to sell you? [132] A. Well—

Mr. Hilliard: (Interposing) Your Honor, I object to the relevancy of any of this line of questioning. We are talking about a '53 contract, a '56 contract, and the period '55 to '57. It seems to me this is not related in any way or couldn't conceivably have any bearing on it. He has hearsay agreements with other companies he is buying—

The Court: I may have missed the full import of the question.

(Whereupon the reporter read the previous question.)

Mr. Tilbury: I was merely attempting to develop the general background. I don't plan to spend a great deal of time with it.

The Court: Yes, I am convinced for the witness to give the jury the benefit of his full statement concerning his background and experience in the petroleum field, and with that in mind he may continue. We are not dealing with any of the contracts between the parties as such, but only

to show his connection with the industry of petroleum products.

Q. (By Mr. Tilbury) Mr. Perkins, just briefly, how did it come about that you had some sort of dealings with the Standard Oil Company initially? A. Well—

[133] Q. Standard Oil of California, I should say. A. It came about just like this: They came to my office one morning—

• Mr. Hilliard: (Interposing) Your Honor, I object to this type of thing; the fact he entered into a contract with Standard and the fact that somebody came to his office or not, I don't see how that could be material to this case.

The Court: The objection will be overruled.

The Witness. They came to my office one morning.

Mr. Hilliard: May I have the occasion, who came to his office?

The Witness: I will tell you. Mr. Robert Harris, Mr. Lee Powell, and Mr. Hallstead of the Standard Oil Company. They came to my office and asked me if I would like to make a contract with the Standard Oil Company.

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[136] Q. All right, sir.

Will you identify for us who Mr. Hallstead was and what [137] his position was with the Standard Oil of California.

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The Witness: Mr. Hallstead told me that he was the Assistant General Manager of the Standard Oil Company of the Portland area district.

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Q. (By Mr. Tilbury) All right now, Mr. Hallstead and Mr. Lee Powell, you said, I believe, and Mr. Robert Harris came to your office? A. Yes, sir.

Q. Correct? A. Yes.

Q. For what purpose? A. Mr. Hallstead asked me if I would like to make a deal with the Standard Oil Company to buy gasoline.

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[138] Q. (By Mr. Tilbury) Do you know of your own knowledge whether Mr. Hallstead had a position of some sort with the Standard Oil of California? A. Yes, I do. I had met him before several times.

Q. Had you had occasion to deal with him on other occasions? A. Many times.

Q. All right. Now, you say the Regional Office, was that his position? A. Assistant, I believe they call them, Assistant General Sales Manager; I believe that is the official title.

Q. Are you speaking of the Portland area? A. Of the Portland area.

Q. And that is for the Standard Oil Company? A. That is the Standard Oil of California.

Q. Can you define what is meant by the Portland area, in a general way? A. The Portland area is all of Oregon and Southwest Washington.

Q. The entire State of Oregon? A. No, I don't believe so. I believe the eastern part of Washington comes under the Spokane territory.

. . . . .  
[139] Q. (By Mr. Tilbury) What did you do, Mr. Perkins? A. The result of that meeting, I went to San Francisco.

Q. To which office? [140] A. To the Standard Oil Company of California's office.

Q. All right. Were you accompanied by anyone at that time? A. Yes, sir, I was accompanied by Mr. Harris and Mr. Powell and their two wives.

Q. And who did you meet at the Standard Oil Office, if anyone? A. The first one I met, I can't recall his name—they met us at the ferry and took us to the hotel and picked us up the next morning and brought us to the Standard Oil office, and I think the first person that I met there, I believe, was Mr. McClanahan, just for a minute.

Q. Could you identify him? A. Mr. McClanahan was the General Sales Manager; General Sales Manager at that time.



Q. That is in 1945? A. Yes.

Q. Later did he become something more than the General Sales Manager? A. Later he became the Executive Vice President or the Vice President in charge of all Western operations.

Q. Very well. Now, just to sort of skip over a few details, I take it that at that time, if you don't mind, perhaps I could save a little time—was a contract entered into between you and the Standard Oil Company? [141]

A. Yes, there was.

Q. And this was following some negotiations, I take it? A. About two weeks of negotiations.

Q. And that contract was prepared in your name, I take it, and in the names of others? A. It was prepared in my name and Mr. Harris' name and in Mr. Powell's name.

Q. Who signed it? Did Standard Oil Company sign the same contract? A. Yes, sir.

Q. Did the three of you sign individually? A. No, sir. We all signed the same paper.

Q. That is what I mean. In 1945 did you sign as Clyde A. Perkins or did you sign in some other capacity? A. No. I signed my own name individually.

Q. Mr. Perkins, did you use some assumed name in connection with your activities at that time? A. I have always used the name of the Perkins Oil Company.

[142] Q. (By Mr. Tilbury) Has that been true since 1928? A. Yes.

Q. You sold the product under different names, but you used them in your own business, is that true? A. Yes.

Q. All right. Now, were you operating as an individual proprietor, that is, a single man operation at that time? A. Yes, sir.

Q. Was your son, Allen, assisting you? A. Yes.

Q. In operating at all? A. Well, he was working in the company for me. He had just got out of school, and he was working for me.

Q. In 1945, was he simply an employee? A. Yes.



Q. Did he receive a salary like other employees? A. Yes.

Q. And did you have Maxine Ross working for you individually? A. Yes.

Q. Now, Mr. Perkins, have there been more than one contract signed between you and the Standard Oil Company? A. Yes.

Q. On what other times or in a general way were these contracts signed? A. The first one, 1945, the next one '53, the next one in [143] 1956.

Q. Now, were these contracts signed under individual names? A. All in my name.

Q. Have there been any contracts signed on behalf of the corporation by you with the Standard Oil Company? A. Never to my knowledge.

Q. Have all dealings been between yourself and the Standard Oil Company from 1945 until the time you terminated the relationship with them? A. Yes, sir.

Q. How about products that were drawn and in whose name were they charged to the Standard Oil? A. They was charged to Clyde Perkins.

Q. Have there been any illustrations or any times in these years that you can think of where the products were billed to anyone other than yourself individually? A. No, sir.

Q. Now, with respect to products that were drawn by Mr. Harris and Mr. Powell, were these charged to anyone? A. They was charged to Perkins for Harris. Well, I don't know which is first just now, but I will say Harris, Powell and Perkins.

Q. Well when you say, "by Perkins" will you define that? A. That is myself, individually.

Q. Individually. Were they ever charged to a corporation? [144] A. No, sir.

Q. Now, did you at any time following 1945, did you create a partnership of any sort? A. Yes, I did. That is not a partnership, but I created after 1945 a basis of payment for son is all.

Q. Then what sort of basis for payment? A. A portion of the profits.

Q. Would you explain what you mean by that? A. Well, instead of paying him a salary, I let him have a drawing account, and he was to share in the profits of the organization, of the company.

Q. Did this remain true of them until 1953? A. Up until 1952, yes.

Q. Did he have a voice in the management? A. Well, I had all the final decisions, all the final decisions. He—of course, we talked things over just as I would with any employee. Maybe I talked it over with him more than I did the others, but the final decision on everything rested on me.

Q. How long has your son worked together with you in one capacity or another in the petroleum business? A. Well, since he got out of school, and I believe that was, well, in the middle thirties.

Q. Now, was there at any time a corporation or corporations formed? [145] A. Yes, there was.

Q. What time? A. 1952.

Q. I see. Would you tell us what names were used by those, by the corporations? A. We just kept the same names, Perkins Oil of Oregon and Perkins Oil of Washington.

Q. Have you been using those names prior to that time? A. Yes, sir, we had been using them for many years.

Q. When did you start using them? A. When we first started business.

Q. And did you separate it by Oregon and Washington? A. Well, we kept them all in one set of books until I believe about—it seems to me like somewhere around 1947, and the tax business between the two states got complicated. One had the sales tax and the other didn't. So, we then set up two sets of books called Perkins Oil of Oregon and Perkins Oil of Washington.

Q. Was the business divided on a strictly geographic basis? A. Yes.

Q. In other words, the Oregon business was done in the Perkins Oil of Oregon books and the Washington on the Washington books? A. Yes, sir.

Q. Now, as a result of the formation of the corporations, [146] was the named changed in any way other than the addition of the word "corporation"? A. No, not that I know of.

Q. All right. Now, did you have any discussion with Standard Oil people; and, if so, tell me which people with respect to the formation of the corporation? A. Yes, I did.

Q. Which officer? A. With Mr. A. P. Johnsen, the President of the S. O. Company.

Q. Would you identify for us the S. O. Company? A. The S. O. Company was the jobber division of the Standard Oil Company of California.

Q. Now, maybe you had better define so we will have a picture of what the jobber is? A. Well, a jobber is—I will give my definition of it. A jobber is one that buys merchandise from another company and resells it under his own brand to distributors or to service stations or to commercial accounts.

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[148] Q. All right. Now, you mentioned you had conversation with Mr. A. P. Johnsen I believe in 1952 with respect to the corporation? A. Yes, sir.

Q. And Mr. Johnsen is also known as August P. Johnsen? A. That's right.

Q. He was head of the S. O. Corporation? A. Yes, sir.

Q. And was he the highest man in the organization having charge of rebrand jobbers?

Mr. Hilliard: I object, Your Honor. This witness doesn't know the internal workings of the Standard Oil Company. He has never been shown to have been an employee or officer of the company.

The Court: May I have the question?

(Whereupon the Reporter read the pending question.)

The Court: The objection will be sustained.

Q. (By Mr. Tilbury) All right, Mr. Perkins, just tell us now, if you will, what you told Mr. Johnsen at that time, your approach to what happened, what you told him?

Mr. Hilliard: I object. This is apparently directed to the formation of two corporations, Perkins Oil Company of Oregon and Washington; and what Mr. Perkins said or did not say about the corporations would be irrelevant and immaterial [149] and incompetent. It is truly a self-serving statement, Your Honor.

The Court: You may answer.

The Witness: Shall I answer?

The Court: Yes, you may.

A. I told Mr. Johnsen that I would like to slack up; that I was getting to the time that I wanted to do less work; that I had my two boys with me; that I wanted to incorporate and let them buy out the business, the operating part of the business and eventually they would own it all. [150]

A. (Continuing) We discussed it at quite a length at one time. He told me he could see no—

Mr. Hilliard: Excuse me, Your Honor. I would object to any statements being attributed to Mr. Johnsen. He is not shown to have been authorized to make any statement that was impliably authorized by the company or that the company would have any voice. And whether or not Mr. Perkins incorporated or did not incorporate this business, this would in no way—any statement attributed to Mr. Johnsen would in no way be binding on this subject and could not be within the scope of any employment as shown by the record.

Mr. Tilbury: Your Honor, may I say for the record that I think Mr. Johnsen, as I understand it, would be probably the only one who could bind the company. He was—

The Court: Well, without further comment, the objection will be overruled.

Q. (By Mr. Tilbury) First, I believe you have identified the two boys you had reference to. A. My son Allen and my nephew Marvin Lennington. I always called him one of my boys, because he has been with us a good share of his life.

Q. When did he first come into contact with you? A. He first came over here in this part of the business in the late forties. He came over from Yakima.

Q. What had he been doing there? [151] A. In the transportation business.

Q. Now, at the time of the conversation that you started to relate to us, had the corporations been formed at that time? Were they in existence? A. When I talked to Mr. Johnsen?

Q. Yes. A. No, they were not.

Q. All right. Now, Mr. Perkins, would you pick up where you left off with relation to that conversation?

Mr. Hilliard: I object, Your Honor, for the same grounds, and in addition, there has been no specification of the time and place of the conversation.

The Court: We might as well fill that in now. Fill in the time and place.

Mr. Tilbury: Yes, sir.

Q. (By Mr. Tilbury) Would you fix the time and place for us? A. The time and place was that Mr. Johnsen came to my office one time, and I told him there. Of course, he knew Allen, and I called in Marvin and introduced him to Marvin—that's Marvin Lennington—and we discussed it then quite at some length, and that was in—in the year 1952.

Q. Can you identify the time of year for us, Mr. Perkins? A. Well, it was in—I'd say it was in the late fall of '52. In the fall of '52.

[152] Q. Can you be certain that this was before the corporations were organized? A. Oh, yes, definitely it was.

Q. All right. Now, would you relate the conversation? A. Well, I can't relate all the conversation, but we dis-



cussed it and I told him what I wanted to do and how—and what the ultimate thing that I wanted to arrive at, and I told him that I would have to—wanted to assign the contract to the corporation so I could—so the boys could eventually own the business and I could retire.

Q. Was this agreeable with Mr. Johnsen?

Mr. Hilliard: I object, Your Honor, on the same grounds.

The Court: Yes. The objection to the form of the question will be sustained.

Q. (By Mr. Tilbury) What was the outcome of the meeting, Mr. Perkins? A. Well, the meeting was very amicable, and I was given to understand that as far as—that that was all right, to go ahead and incorporate.

Mr. Hilliard: Your Honor, I object and move to strike his understanding, because it is not binding on the defendant.

The Court: Yes, it is merely the witness' conclusion of what the other party may have considered about the matter. It will be stricken from the record, members of the jury. [153] Disregard it.

Mr. Tilbury: All right. I don't mean to ask anything that Your Honor has already ruled on. I don't believe you have, but I will withdraw it if it is.

Q. (By Mr. Tilbury) Mr. Perkins, what did Mr. Johnsen say at that meeting— A. He—

Q. —in response to your statement?

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The Witness: He said he could see no reason why that couldn't be brought about.

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Q. (By Mr. Tilbury) Now, were corporations organized sometime after that— A. The two organizations were then organized.

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[154] Q. (By Mr. Tilbury) Mr. Perkins, who organized the corporations? Who did the physical work? Who did the actual physical work in getting the corporations organized? A. Mr. Snider, my attorney, and myself.

Q. Would you identify Mr. Snider for us, please. A. Mr. Snider, Claude C. Snider, is an attorney in Vancouver.

Q. Has he represented you for some time? A. A number of years, yes.

Q. Now, did he organize one or two corporations? A. We made two corporations, one for Oregon and one for Washington.

Q. All right. Now was stock prepared in some way, stock certificates prepared by Mr. Snider? A. Yes, sir.

Q. Did you have some kind of meeting with Mr. Snider? A. Yes, sir.

Q. Will you describe what happened at the meeting? Don't relate, please, comments that Mr. Snider or Allen or Mr. Lennington made. Just tell us what happened at that meeting. A. Well, we had—of course, I had several meetings leading up to the conclusion of the corporation. At this particular meeting, I assume this is the one you are thinking about—

Mr. Hilliard: May we have the time and place of this meeting, Your Honor?

The Court: If you will supply it, please.

[155] The Witness: The time was in the late fall of '52, in Mr. Snider's office, Mr. Allen Perkins and Mr. Lennington and Mr. Snider and I were in the office. Mr. Snider handed me the stock, and we signed the stock. We signed all the papers there.

Q. Now, by "we", we had better identify who— A. The three boys—the two boys and I signed myself. Mr. Lennington and Allen and myself, we signed the papers. We made a contract between ourselves what they was to do in order to acquire the ownership of the company.

Mr. Hilliard: Your Honor—

The Witness: And they pledged—they endorsed the

stock over to me and pledged the stock to me, and then signed a resignation as an officer of the company.

Q. (By Mr. Tilbury) Now, would you explain why this resignation came about? A. It came about in this way: That the contract—

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The Witness: Well, these papers were all—were all [156] completed on the advice of counsel, advice of our attorney. He did it all for us. And the reason the boys signed the contracts—resigned as officers was that the contract provided that if they failed to make the payments as agreed, that I could take back—take over all the corporation—

Mr. Hilliard: I object—

The Witness: —without any—without—

The Court: Do we have those documents? If we have them identified, they speak for themselves.

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[172] Q. (By Mr. Tilbury) Mr. Perkins, at the time the corporations were organized in 1952, did you transfer any of your personal real estate to them as distinguished from leases? A. I transferred no real estate to the corporations.

[173] Mr. Hilliard: Your Honor, I object to the use of the term “transfer” as having no significance. He says he didn’t transfer, and yet he says he leased. Now, I think a lease would be a transfer.

The Court: Yes, there might be an understanding in that area. Develop what he has in mind.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Mr. Perkins, you did lease some of your property to the corporations? A. Yes.

Q. Now, generally, can you tell us what property you leased? A. Well, I can’t tell you offhand what properties. I leased to the corporations several service stations.

Q. How about bulk plants? A. And bulk plants.

Q. Were there some that you did not lease to them? A. Yes, there was some that I did not lease.

Q. Why was there a distinction? A. I don't believe I can answer just why there was some that I didn't—there was some that I didn't lease. There was a bulk plant in Centralia that I leased, but the service station next to it I didn't because I had a long time lease with the operator there and I just let it run on. And then on another piece of property in Vancouver, they only leased [174] just a small portion of it, and I retained the other half—the other two-thirds. And in Washougal, they only leased the service station part, and I retained the other part. There was various reasons for it.

Q. How about Astoria?

Mr. Hilliard: Your Honor, for point of clarification, the witness has used the term "they leased". I assume he is still talking about the Perkins Oil Company of Washington?

The Court: I assume so.

Mr. Hilliard: May I ask him if that is right?

Q. (By Mr. Tilbury) Go ahead, Mr. Perkins. A. When I speak in Washington, I'm talking about the Perkins Oil Company of Washington. When I spoke of stations in Oregon, I'm speaking of Perkins Oil Company of Oregon.

Q. How about the station at Astoria, was that transferred to the corporation, or corporations as the case may be? A. I don't think that was ever either transferred or leased to the corporation—

Q. Mr. Perkins— A. —during this period anyway.

Q. Pardon me. Would you define for us what is meant by the term "bulk plant"? How does that differ from any other installation? A. Well, there is three methods of handling gasoline. Gasoline first comes into this Northwest—I am speaking of [175] this Northwest—comes in by boat into a large marine terminal. That's the only way it can come in. There is no other method provided at this time. Then it is hauled out of that marine plant by truck

and trailer or semi-trailer—I suppose it could be taken out by barge—and to an intermediate plant, which is in the territory which the gasoline will be distributed from. For instance, we have—say we have a bulk plant in The Dalles, we would haul gasoline from the marine terminal to our bulk plant in The Dalles or in Hood River, and then it would be redistributed from there in small equipment.

Q. By that you mean a small truck? A small truck by “small equipment”, is that what you meant? A. Yes, a small truck. About a thousand gallon truck.

Q. And in the case of equipment that went to a marine terminal to your bulk plants, that would be on over-the-road heavy type equipment? A. Yes.

Q. Now Mr. Perkins, you mentioned the Marine Terminals. Does it come in on pipelines too occasionally? A. Not into this area. There is no pipeline here bringing gasoline into the Northwest area outside of Pasco.

. . . . .

[176] Q. (By Mr. Tilbury) Now, does it occasionally move in by truck in an area, that is, up from California or wherever it might come? A. No gasoline can move into this area by truck with the exception of Medford area. Medford area can be hauled by truck from the Bay area. It would be about half way between the Bay and Portland.

Q. Why is it that it cannot move above Medford?

Mr. Hilliard: Your Honor, may we have a time designation? It seems as though the witness is speaking of the present—

The Court: Yes. I don't know if we are talking about the claim period or presently.

Q. (By Mr. Tilbury) All right. Mr. Perkins, would you tell us, during the claim period, that is '55 through '58, did products move by truck any further north than Medford? A. Well, the Medford area. Never anything further north than the Medford area.



Q. And why is that? What is the reason? [177] A. Well, it would be impossible to move it on account of the freight rates.

Q. All right. It is not a physical limitation; it is an economical one? A. It would be an economical loss to do it.

Q. I see. The cheapest way then to do it is to move it by barge or something of this kind or tanker? A. Tanker, and then into the marine terminal.

Q. All right.

Q. (By Mr. Tilbury) With respect to the marine terminals in Oregon, where are these marine terminals? A. The marine terminals in Oregon are down on the Linnton Road at Linnton and Willbridge and along in there.

Q. This is North Portland— A. In the north—let me get my directions here. I'd say northwest part of Portland.

Q. Are there any on the Coast, the Oregon Coast? A. There is a marine terminal also now at Vancouver, Washington. There is a marine terminal in the Astoria, and there is a marine terminal at Crescent City, and a small marine terminal at Coos Bay, and a small marine terminal at Hoquiam [178] Washington. Several in the Seattle area. That's in the area that I do business in.

Q. All right. One in Anacortes, but that is further north; is that true? A. There is one in Anacortes.

Q. All right. I stand corrected. Now, who owns these marine terminals? A. The marine terminals at Linnton and in the Portland area, Standard Oil has one, the Mobile, that's the Standard of New York, has one, Texas Oil Company has one, the Union has one, Richfield has one, the Shell has one. Unless I missed one, that's all. I might have overlooked one. They are all owned by the major oil companies—let's put it that way—except the one directly across the river from Linnton is owned by Time Oil Company.

[179] Q. (By Mr. Tilbury) Mr. Perkins, would you define the term "major" for us. What do you mean by major as distinguished from minor? [180] A. Well, that is easy to define. A major oil company is a large national oil company that does national advertising or semination, that has national brands, and the ones that I referred to here are all majors, with the exception of the Time. The independent oil company in this area is an oil company that buys from a major and either rebrands or used the major brand.

Q. In other words, an independent, as far as the area we are talking about, would acquire its products from a major? A. Here in this territory.

Q. Would Time be an exception to that? A. Time has a small refinery up in Tacoma. I think they can only make one brand of gasoline, one grade, and I assume, well, I assume—I don't know. They would have to get their gasoline from somebody.

Q. Well, you better not guess.

Now, Mr. Perkins, as far as refineries are concerned, is the Time refinery, is it the only independent refinery, or are there others in the area? A. There are others, there is a large refinery at Anacortes by the Shell, and a large one at Anacortes by the Texaco. There is a large one at Ferndale owned by or operated, makes Mobil gasoline.

Q. Are there any independents that have refineries with the exception of this one at Tacoma owned by Time? [181] A. That is right, no independents.

Q. Is the one owned by Time in Tacoma, is it a small one or a large one? A. A small one.

Q. Now, if I might go back to one question I asked earlier or touched upon, with respect to real estate, going back at the time that the corporations were organized; did you physically deed any of your real estate over to the corporations? A. I never did deed any real estate to the corporation.

Q. Now, would this also be true right up to the present time? A. It is true right up to this minute.

Q. Have the corporations owned any real estate, to your knowledge? A. Never to my knowledge.

Q. Was the extent of their ownership interest, not ownership, I should say the extent of their interest confined to that of a lessee, that is someone who leases products or stations, I should say? A. Yes, sir.

Q. Now, following the formation of these two corporations in 1952, did you communicate this fact to the Standard Oil Company in any way? A. After they were formed I did.

[182] How did you communicate to them? A. I went to San Francisco and told them what I had done and asked to have the contract assigned to the corporations.

Q. When did you make such a trip? A. That was in the late winter of '53. No, pardon me. that was in the early winter of '53, the first part of the year of '53.

Q. Was it a fairly short time after the corporations were organized? A. Yes, as quick as I could go south, I was there.

Q. Whom at the Standard office did you call? A. I first went in and talked to Mr. Johnsen about it.

Q. That is again Mr. August Johnsen? A. Mr. August Johnsen.

Q. Did you talk to anyone else? A. Yes, I did. I talked to Mr. Cuyler.

Q. Who was Mr. Cuyler? A. Mr. Cuyler was the General Sales Manager.

Q. For which company? A. For the Standard Oil Company of California.

Q. In other words, the defendant in this case? A. That is right.

Q. One of the defendants? A. Yes.

Q. Did you advise either of these gentlemen of the fact [183] that a corporation or corporations had been formed?

Mr. Hilliard: I would object to any further testimony on this subject on the ground and for the reason it is irrelevant and immaterial, incompetent, the evidence as

testified to by plaintiff shows that he remained on the contracts, he signed the contracts. What he did or did not do in connection with the corporations in no way have probative value in this case.

The Court: It will be overruled.

The Witness: Oh, yes, I did. That is one of my reasons for going there.

Q. (By Mr. Tilbury) All right. What was said by either Mr. Johnsen or Mr. Cuyler?

[184] The Witness: I told Mr. Johnson that I went ahead and completed my corporations now and I was ready to assign the contract and he said, "I don't know," he said, "I have talked that over with some of them and I don't know whether it can be assigned or not." And I said, "Well, I am terribly disappointed if it has not, I have went to a lot of trouble and [185] after our conversations in my office, you told me that it would be done." He said, "Well, we will go up and talk to Mr. Cuyler." We went upstairs and talked to Mr. Cuyler and Mr. Cuyler said, "You will have to get ruling from higher up," and I said, "How high up?" He said, "Well, you will have to get it from Mr. McClanahan." They discouraged me from going up to Mr. McClanahan, but I went up there anyway, and, when I got there, he was either out of the city or I couldn't see him. I was around there two or three days and I was unable to make any progress and Mr. Johnsen told me that I was just wasting my time, that they were not going to assign the contract.

[188] Q. (By Mr. Tilbury) All right, Mr. Perkins, did the contract come up for renegotiation sometime after the formation of the corporation? A. Yes, sir.

[189] Q. Approximately when did this take place with reference to the formation of the corporation; in other

words, when did— A. The corporation was formed in 1952, and the contract came up for renegotiation in the spring of 1953.

Q. All right. And where did the discussions take place which led to the signing of the 1953 agreement? A. Where did they take place for negotiations?

Q. Yes, sir. A. In Mr. Johnsen's office in San Francisco in the Standard Oil Building.

Q. Who participated in those discussions? A. Well, Mr. Johnsen led the discussions. Most of the discussions was with him. There might have been some other people came in the office at different times, but most of the discussions in the 1953 contract were with Mr. Johnsen.

Q. Were you present at those discussions? A. I certainly was.

Q. Was Allen, your son, present at that time? A. Allen was present at all of them that I know of except one.

Q. Did Mr. Lennington participate in any of the discussions leading up to any of these contracts?

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[190] A. Mr. Lennington was in charge of our transportation.

Q. Did he concern himself with the contract negotiations? A. No.

Q. Did he deal with customers, as such, customers of your business? A. Well, not too much. That was his obligation to deal with the customers.

Q. I figured he did on occasions? A. Oh, yes, he would on occasions. Oh, yes, he would on occasions. He would go call on customers.

Q. What generally did Allen Perkins, your son, do? A. My son handled the sales.

Q. The sales as far as the dealings between, that is the sales of the products that you obtained from Standard out to customers, is that it? A. That's right.

Q. And generally what did you do? A. Well, I was—I was the General Manager of the business. I was re-



sponsible for the entire operation. I managed the office. I directed the different ones, different employees. I handled all the credits, the finances.

[191] Mr. MacLaury: Would you clarify? Are you speaking about 1953?

The Witness: I am speaking of all this. Always. And anything else there was to do, I was, I was there all the time working, managing the business.

Q. (By Mr. Tilbury) Would you tell me in what respect your activities changed following the formation of the corporations as far as your day-to-day activities were concerned or any other activities? A. Well, there was no change at all except I just worked harder, that was all.

Q. All right. To what extent did the activities of Allen Perkins change? A. None that I knew of. There was no change in anything that I know of.

Q. Did the activities of Marvin Lennington change? A. No.

Q. Was there anything about the office that varied from the way it had been conducted prior to the corporations? A. Nothing that I know of.

Q. Now, with respect to the corporations, either of the corporations, did you have formal meetings of the Board of Directors? A. Well, I don't believe we did, Mr. Tilbury. I come back pretty well licked, and I don't believe you had any formal [192] meetings with the Board of Directors or with the stockholders. We had meetings occasionally. The three of us would go over to the restaurant and have a cup of coffee and talk things over; and occasionally if something come up that our attorney thought we ought to put in the minute book, why, we decided on something and put it in the minute book. That is just the way we operated. It was a family operation and we looked on it as a family operation. As far as I was concerned, there was never any change in the business. It went on just the same as it did from the day it started, and I don't believe that we ever had any Board, any formal Board of Directors meetings.

We would have three, the three of us would sit down and talk about something, which we did many times, of course.

[210] (By Mr. Tilbury) All right. Mr. Perkins, following—and I won't repeat what was said yesterday—the discussions that you had prior to the 1953 agreement, did you have or did you mention to the Standard officials at any time this matter of corporations thereafter?

Mr. Hilliard: Your Honor, this was covered yesterday again, and again we have to go through the same record of objections. He said, "Later in 1953, he mentioned it again", and then he moved on to another subject matter.

Mr. Tilbury: Well, that is not bringing it up to date.

The Court: It will be overruled. You may inquire.

Q. (By Mr. Tilbury) Go ahead, Mr. Perkins. A. Yes, we had different discussions about it.

Q. Would you identify places and times and individuals for us? A. Well, I discussed it two or three different times with Mr. Johnsen in Standard Oil's office.

Q. Which Mr. Johnsen? A. Mr. A. P. Johnsen, the President of the S. O. Company.

[211] Q. (By Mr. Tilbury) Well, can you tell us any specific times you might have discussed it with Mr. Johnsen other than those that you might have related to us yesterday? A. Well, one particular time, that is at the time that we were discussing the 1953 contract, I made a special request then to get the contract made in the name of the corporation, which they refused to do.

Q. (By Mr. Tilbury) If you can identify the specific time and place, Mr. Perkins, please do so. A. Well, I couldn't identify the hours or the day, but it was just prior—it was during the time of the negotiation on the 1953 contract. And I believe, if I'm not mistaken, that that negotiation took place in the month of March, 1953.

Q. All right. And this was a discussion with Mr. Johnsen? A. Yes, sir.

Q. All right, sir. Now, did you mention the subject of the corporations at a subsequent time to that? [212] A. Yes, I did later on after they had accepted—to pinpoint the time, it was after they had accepted the assignment of the corporation—assignment of the Robert Harris interest to the corporation.

Mr. Hilliard: I object and move to strike that, Your Honor. The witness is not competent to testify to what Standard accepted from some other—

The Court: I didn't get the whole conclusion. May I have it?

(Whereupon the Reporter read back the last pending answer.)

The Court: That is just fixing a period of time. It will stay in the record.

Q. (By Mr. Tilbury) With whom did you discuss it? A. I discussed that with Mr. Johnsen.

Q. What did Mr. Johnsen say, if you recall?

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The Witness: Well, I asked him why they would accept theirs and not mine, and I was interested in it because I was the guarantee on the contract—the guarantor on the contract. And he said, "Well, Bobby is dead and we decided [213] it would be best for us to just take their corporation." And I asked them why they wouldn't take ours, and he says, "Well, we don't want to deal with the corporation. We want to deal with you personally."

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[230] Q. (By Mr. Tilbury) Mr. Perkins, in 1957, did you make [231] some effort to dispose of your business, your end of your business? A. In '57?

Q. Yes, sir. A. I did.

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Q. (By Mr. Tilbury) Did you notify Standard of your desire? A. Yes, sir.

Q. How did you notify them? A. I notified them in person.

Q. Did you receive any kind of written response from them with regard to— A. Not—not a written response, but I remember it at this time.

Mr. Tilbury: All right. Could the witness by shown [232] Exhibit 232, please.

Q. (By Mr. Tilbury) While he is looking for that, did any of the Standard people who you know to be connected with Standard come to this area to examine your business? A. Yes, sir.

Q. Do you recall who they were? A. Mr. Godfrey of the Signal Oil Company.

Q. Now, what is his first name, please? A. Darwin Godfrey.

Q. And what is his capacity, if you know, or was his capacity? A. President and General Manager of the Signal Oil Company.

Q. Now, sir, would you identify the Signal Oil Company for us? A. The Signal Oil Company is a wholly owned division of the Standard Oil.

Q. All right. Now, there is a Signal Oil & Gas Company too, I believe, that has been mentioned. Is that a different company than Signal Oil Company? A. Entirely different.

Q. Is it owned by the Standard Oil Company, to your knowledge? A. Not to my knowledge.

Q. All right. Now, is Mr. Godfrey still with the Standard Oil Company, if you know? A. I only know from hearsay.

[233] Q. All right, you had better not say. At that time though he was President of the Signal Oil Company? A. Yes, sir.

Q. That was a division of Standard? A. Yes, sir.

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[234] Q. (By Mr. Tilbury) Mr. Perkins, do you recognize Exhibit 232? A. Yes, I do.

Q. Do you recall receiving this letter? A. Yes, sir, I received this letter.

Q. All right. Is this letter written by Mr. Godfrey, apparently? A. Wrote and signed by Mr. D. F. Godfrey.

Mr. Tilbury: All right. We would offer in evidence at this time Exhibit 232.

The Court: Any objection?

Mr. Hilliard: No, Your Honor.

The Court: It will be received and the original will be substituted.

Mr. Tilbury: Yes, sir, fine.

(Whereupon Plaintiff's Exhibit No. 232, Letter dated June 4, 1957 to Perkins from D. F. Godfrey, Signal Oil Company, was received in evidence.)

[235] Q. (By Mr. Tilbury) Mr. Perkins, to whom is this letter addressed? A. Clyde A. Perkins.

Q. Does the name Perkins Oil Company appear there? A. Yes, sir, Perkins Oil Company.

Q. All right. How is it identified? A. Clyde A. Perkins, Perkins Oil Company, P. O. Box 59, Vancouver, Washington.

Q. All right. Does the word "incorporated" appear there anywhere? A. No, it does not.

Q. Perkins Oil Company is the name that you used before the corporations were created? A. I've used that since 1928.

Q. All right. Now, perhaps—could you read for us the contents of that letter? A. Do you want me to read the letter?

Q. Yes. I don't think it is very long. A. "Dear Mr. Perkins: Thank you very much for your letter dated May 29, transmitting a statement showing your sales in various general localities in the States of Washington and Oregon.

"The thing which would be most helpful to me at this time would be a list showing the actual locations of the dis-



tributor plants, and especially the retail outlets. It is [236] particularly important to us to estimate what volume we can anticipate under our brand and policies.

"If you will furnish the station locations, I assure you that our dealer sales manager will have the estimate made without contacting any of your people and without going on the properties. He will merely drive by and size up the station and the neighborhood in order to estimate the potential for us. Following that information, you and I can discuss the subject in more detail before any further steps are taken."

"Kindest personal regards. Sincerely, Dar, D. F. Godfrey."

Q. Now, did he come to this area following the receipt of that letter? A. Yes, sir, he did.

Q. What did he do specifically, I mean, without detailing everything? A. He discussed the entire situation with me with regard to our outlets and to our business.

Q. All right. Now, Mr. Perkins, if you will, would you trace for us from the beginning in 1945, and without giving us all the details, but trace in a general way the pattern of your purchases, individually I am speaking of, from the Standard Oil Company in 1945 through the end of your relationship with them in 1958. [237] A. The pattern of our purchases?

Q. Yes. That is, whether it went up or went down in a general way. A. Oh, up until 1955, our sales climbed continuously, or the fifty—to the middle of '54 they climbed continuously. From then on, they declined.

Q. (By Mr. Tilbury) Did anyone make purchases from Standard Oil Company with the exception of yourself individually? A. No one except myself.

Q. All right. Now, when you were speaking of purchases then, you would be referring to purchases that you made individually? A. That's right.

[238] Q. (By Mr. Tilbury) Mr. Perkins, you are familiar with these books, are you not, 221-A-1 and 222-F? A. Yes, sir.

Q. What sort of information is contained therein? A. These are invoices from the Standard Oil Company.

Q. All right, sir. Now, would these be typical of invoices—would these be typical invoices? Are they unusual in some fashion? Are these typical of the invoices that you received for products that you obtained from Standard over the years? A. Yes, sir.

Q. All right. Is there any other information there besides invoices? A. Well, there is a summary of the invoice—of the preceding invoices, and that's all I see in here just in glancing.

Q. Who prepared the invoices? A. I don't know who prepared them. I guess the Standard Oil. They mailed them to us.

Q. Would that be true of all the invoices in those books, as far as you know? A. Yes, sir.

Q. Are there some identifications on the front of the various documents? Let's take 221-A-1. [239] A. You would like me to read an invoice?

Q. No, I don't think we better do that as yet. I am asking if there is some identification on the front of it as far as locality or time. A. The locality and the date is on the invoice and where the merchandise was received. The name of the party it was billed to.

Q. Now, with respect to 221A1, what area would be included in it; can you tell part of the area? A. I believe this is the Aberdeen area; 221A1 is Aberdeen area, or Washington area.

Q. What period of time? Maybe you can look at the first one and the last one? A. I will. January the 5th, '56, until—no, January the 4th, '55, to January the 6th, '56.

Q. Now, this would be stations that you supplied around Aberdeen? A. These were stations we supplied around

Aberdeen and they are also some Olympia in here, I notice, going through.

Mr. Hilliard: Your Honor, I object to the classification as "we."

Mr. Tilbury: I didn't say "we." I said "you."

Mr. Hilliard: The witness said "we."

The Witness: I am sorry, I should have said "I."

Mr. Hilliard: I submit those invoices show the supply [240] was from the Perkins Oil Company of Washington to those customers, not by Mr. Perkins individually.

Q. (By Mr. Tillbury) Mr. Perkins, of the invoices that were received over the years from Standard Oil Company, to whom were they invoiced? Were they invoiced at any time to either of these two corporations, Perkins Oil of Washington or Perkins Oil of Oregon? A. They never was. Every invoice that was made was made to Perkins, Powell, and the Harrises organizations.

Q. All right. Besides the invoices, were you presented with any other bills by the Standard Oil or recapitulations or summaries of amounts owing? A. Well, there would be summaries of each bunch of invoices listed and the amounts owing.

Q. All right. And to whom were the summaries sent? A. Well, the summaries would be the same. They would be listed. To begin with, in the first part of our operation they were all mailed to the Kenton office and then divided there and our portion was sent to Vancouver. Later on—

Q. I think we better not use the word "our," so we will avoid this problem. A. Well, my invoices. Well, later on the invoices came direct to me.

Q. Would you explain for us where Kenton is and what took place there? [241] A. Kenton is in the Northeast part of Portland on Burrage Street.

Q. What sort of thing is there? A. What is there?

Q. Yes. A. That is the bulk plant of the Champion Oil Company.

Q. Now, what is Champion Oil Company? Is it a corporation? A. No, sir.

Q. What sort of thing is it? A. Champion Oil Company was merely a partnership or—I wouldn't say it was a partnership—it was a buying organization or a trade name that we used. A trade name.

Q. Was it a corporation? A. It was not a corporation.

Q. Did you and Mr. Powell and Mr. Harris have a partnership at any time? A. Never at any time.

Q. How did you operate your three respective businesses? A. Each of us operated entirely separate.

Q. All right. A. I believe that Powell and Harris had some connections; I believe they operated, had a few stations that they were in together on, and possibly they were in together on their transportation end of it.

Q. In the beginning did you use the Kenton plant? [242] A. I attempted, to start with, to use the Kenton plant.

Q. What happened? Why didn't you continue to use it? A. I found it was impossible due to the tax situation in the State of Washington.

Q. Then what did you do? A. I immediately called the Standard Oil Company on the telephone and told them about it.

Q. What happened? A. Mr. Hargens came from California—

Q. Well, I think you need not relate his conversation but just what happened as far as you personally were concerned? A. The result of it was that I would draw no more merchandise for the State of Washington out of the Kenton plant and I would only use the Kenton plant for just an emergency delivery.

Mr. Hilliard: May I ask the time this was taking place? The Witness: This took place in 1945.

Q. (By Mr. Tilbury) So what did you do? A. I built my own bulk plant in Vancouver.

Q. Did you use that bulk plant? A. Well, I already had a bulk plant in Vancouver right down in the heart of the city, but the city was urging me to move it out, and so I went ahead and built a new, large one on the outskirts of the city.

[243] Q. Was that in about '45 that you built this, or '46, or something like that? A. '45.

Q. All right. You still used the Kenton plant occasionally, I take it, from your testimony? A. Well, I had a few stations here in Portland of my own and I drew some gas out of the Kenton plant for that and then we drew some gas later on occasionally out of the Kenton plant for some Portland deliveries.

Q. Were these large or small? A. Small.

Q. In comparison with the Vancouver bulk plant, how would the ratio stack up, roughly? A. Oh, I would say ninety-nine to one.

Q. Now, can you identify Exhibits 221A1 and 222F as having come from your office? A. Can I identify them?

Q. Yes, sir. A. Yes, I know what they are. They are invoices from the Standard Oil Company.

Q. All right. Can you identify these as having come directly from Standard? A. They come directly from Standard.

Mr. Tilbury: We would offer into evidence 221A1 and 222F.

[244] The Clerk: 221F.

Mr. Tilbury: 221F, I am sorry.

The Court: They will be received.

(Plaintiff's Exhibit No. 221A1, Aberdeen 1955 invoices, and Plaintiff's Exhibit No. 221F, packet of invoices 1956 Standard to Perkins, Powell, and Harris, were received in evidence.)

Mr. Hilliard: 221A through F?

Mr. Tilbury: No, 221A1 and 221F.

Q. (By Mr. Tilbury) Mr. Perkins, rather than have you go through all of the various invoices, would these be



typical invoices? A. Yes, the invoices are identical all through the entire period.

Q. Now, would you take any particular page, any page that has an invoice on it at random in each of those. A. (Witness opens book.)

Q. Now, sir, would you read the people to whom products are billed? A. To what?

Q. To whom are the products billed on that page, and you better identify the date and place for it, so we have it.

Mr. MacLaury: May we have the invoice number?

Mr. Tilbury: Yes, please.

[245] The Witness: I will try to find one that is not stapled down here, if I can.

Well, here is one, July the 31st, 1956, billed to Clyde A. Perkins. I have to tear it off, I can't—

Q. (By Mr. Tilbury) Well, you better not tear it. A. It is billed to Lee G. Powell, Clyde A. Perkins, Harris Oil Company, and Harris Distributing Company.

[250] A. Everything was billed to Clyde A. Perkins.

Q. Lubricating oils as well as gasoline? A. Yes, sir.

Q. All products? A. Yes, sir.

Q. Now, Mr. Perkins, you traced for us in a general way the pattern of your business and the purchases that you made from the Standard Oil Company; and as I recall, your testimony up to 1954, the business grew, is this true?

A. Yes, sir.

Q. Did it grow substantially? A. Very substantially.

[251] Q. All right. And I believe you told us that thereafter it declined? A. It started declining, yes.

Mr. Hilliard: Your Honor, I object to this.

The Court: We are talking about purchases, as I understand, his purchases.

Mr. Hilliard: His purchases from Standard. His purchases and not the over-all growth of this business or some other entity.

Q. (By Mr. Tilbury) Just your personal ones, Mr. Perkins? A. My purchases declined after '54.

Q. All right. Now, why did it decline?

A. It declined. I lost the largest account that I had which included one-third of my business through the Standard Oil.

Q. Which account? A. The Truax Oil Company of Albany, Oregon.

Q. All right. And were there other factors? A. There were other factors.

[252] Q. What are the other factors? A. In 1955 we lost the Carter account to the Signal Gas Company, Signal Oil & Gas Company.

Mr. Hilliard: I object to this, Your Honor, I move that that answer be stricken.

The Court: Yes, members of the jury, the witnesses statement that he lost the account will be left in. We will leave it in the record. You will have to determine by all the evidence what he means by that; but, the Signal Oil is his own conclusion, disregard that.

[253] Q. (By Mr. Tilbury) Did you obtain some products from the Standard Oil Company before 1955 which ultimately were delivered to the Les Carter Oil Company?

[255] A. Yes, I did.

Q. (By Mr. Tilbury) And did anything happen after?

[256] A. After 1955, the sales to the Carter Oil Company diminished and—to nothing.

Q. All right. Now, were there other factors that brought a decline in your business?

Mr. MacLaury: I would object to that. It doesn't pinpoint it to what business he is directing the question to. What business—

Q. (By Mr. Tilbury) Well, identify it particularly in relation to purchases, the purchases of the products which

you made from Standard Oil Company that you indicated declined after 1954, and I am merely asking you if there were other factors besides the Carter, which you have identified, and the Truax, which you have identified? Were there other factors? A. You mean after 1954?

Q. Yes, sir. A. Or 1955?

Q. Yes, sir. A. Well, we lost the Maxwell account. That Maxwell account, we discontinued selling Maxwell—

Mr. MacLaury: I move to strike the answer, Your Honor, and the use of the words "we lost the Maxwell account". The question is directed to Clyde A. Perkins' purchases individually, and he insists on getting into—

The Court: Members of the jury, disregard the witness' [257] statement "we lost the account" until it is identified which one of the entities is involved that have the account, if they had an account.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Mr. Perkins, without getting into the specific accounts, now, as I understand it, in certain cases there were contracts with the corporation and with their customers; is this true? A. That's true.

Q. One of which would have been Maxwell, I take it? A. That's true.

Q. All right. Now, how did you, if you did, transfer the products from yourself individually to the corporations? Was there a formal transfer of some sort or formal sale? A. No.

Q. (By Mr. Tilbury) What I am asking is, how did the— in those situations where the markets were marketed, if they were, by the corporations over here and which you obtained from the Standard Oil Company, how did the product get from [258] yourself over to the corporations? A. Well, Mr. Tilbury, I paid no attention to the corporation. I didn't even consider it—

Mr. Hilbard: Your Honor—

The Witness: —in existence—

Mr. Hilliard: Excuse me. Your Honor, I object to that and move to strike it as non-responsive. The question was "How did the product get from Mr. Perkins to the corporation?"

The Court: Well, I am somewhat myself at a loss to explain that when, actually, nothing happened in the sense of the word.

Mr. Tilbury: That's about it.

The Court: So whether or not it was a book transaction, whether or not it was by memorandum or note or what, I suppose that would get at the basis of what we mean by "how was it transferred."

Mr. Tilbury: Yes, sir.

The Court: So the witness' statement about his not considering any difference, in that sense of the word, it is his own thinking about it. It is his conclusion, and it is stricken from the record. Disregard it.

Q. (By Mr. Tilbury) Did you send bills, for example, to the corporations, either of them? A. No, I did not.

Q. Did you send invoices to them? [259] A. No.

Q. Did you have a contract with either of the corporations? A. No.

Q. Would the only documents that pertained to the corporations be those that you identified for us yesterday, being Exhibits 1017 to 1049, Defendant's exhibits, now remarked as Plaintiff's 400 through 422? Would these be the documents? A. I don't know the numbers, but those documents that I identified yesterday, that was the only documents we had.

Q. All right. Now, was there a formal exchange of letters between you and the two corporations— A. Never.

Q. —in any way? Did they have a separate office— A. No.

Q. —from yours? What office did you hold in the corporations, if at all? A. President.

Q. And were there other officers? A. Secretary and Treasurer.

Q. Who were they? A. My son was Secretary and my nephew was Treasurer.

Q. All right. A. That is, when we incorporated, that is the names we had taken.

Q. Did you have a Board of Directors as such? [260] A. We were the Board of Directors.

Q. All right. Now, were there other factors that brought—without identifying the specific customers or where they went and the like, was there anything else that happened after 1954 that led to a decline in your purchases individually from the Standard Oil Company? A. You mean in the year of '54 or after '54?

Q. In the year '54 or thereafter throughout the balance of your relationship with Standard. I am not asking you to go over every particular customer now. We will, I think, reserve that until later in order to present the thing a little more orderly. A. Well, the biggest—the two largest factors that we had in the decline of my purchases from the Standard Oil was the discontinuance of my deliveries to certain accounts. That was one of the big declines. And then the other, and the thing that was—finally finished us up was the—the depressed market—retail market, which was caused by the—

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[262] Q. (By Mr. Tilbury) Mr. Perkins, during the claim period, did you personally operate retail stations in the area of the Standard contract? A. Yes.

Q. To what extent? A. Well, our station at Vancouver, our large station there, we operated that continuously all of this time.

Mr. Hilliard: I object to this testimony. The question was, did he personally operate stations during '55 through '57 and he is talking about "we" now, which includes the corporations.

The Court: It will be sustained.

Q. (By Mr. Tilbury) Mr. Perkins, you identified for us yesterday certain documents marked 1017 to 1049, which in



some cases, without identifying each one individually, were leases from yourself and your wife to the corporations, is that the case? A. That is right.

Q. Now, were there some stations that were not leased to the corporations? A. Yes, there were some stations weren't leased.

Q. And where were these stations that were not leased, if you can recall? A. Well, I don't think the station in Centralia was leased [263] to the corporation. The plant was, I don't think the station was.

Mr. Hilliard: Your Honor, we would ask that the witness—we deem it is irrelevant, the ownership, and his relationship to the station, but if he is going to testify about the lease of the station, can he tell us if it is one he owns, if it is or is not leased out to somebody else.

Mr. Tilbury: I would be glad to ask him that.

Q. (By Mr. Tilbury) Did you own the one in Centralia?

A. I did.

Q. Did you own the station as well as the bulk plant?

A. Yes, sir.

Q. Now, you made a distinction between the bulk plant and the retail station. Are they adjoining one another?

A. Well, they are close to one another, yes.

Q. All right. What was the distinction between their operations, as far as the relationship between you and the corporation? A. One was strictly wholesale, and the other one was strictly retail.

Q. What I am getting at, one of these, I gather, was leased to the corporation, Perkins Oil of Washington? A. I know the wholesale part of it, the distributing part of it, the bulk plant was leased to the corporation.

Q. How about the retail station? [264] A. Well, I don't think the retail station was, because we had an operator in there for many years and we just let him stay like he was.

[265] Q. (By Mr. Tilbury) How was this operated, actually, Mr. Perkins? A. The Centralia station?

Q. Just that, no other at the moment. A. It was operated first by hired help and then it was operated by a lease to Mr. Helgeson.

Q. Mr. Irv Helgeson? A. Yes.

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[266] Q. (By Mr. Tilbury) As far as the employees were concerned there at that company—Mr. Helgeson was a lessee, is this true? A. He was a lessee.

Q. All right. Now, there was some kind of lease then from the corporation to Mr. Helgeson, is this the case? A. For that station?

Q. Yes, sir. A. It might have been, but I don't think there were.

Q. All right. A. I don't think there was a lease to Mr. Helgeson for the station. I leased him the station myself, personally several years before, that is before the corporation went in, and I don't think it was ever changed. I don't remember if it ever was.

Q. All right. Now, the lease involving the corporation [267] pertained to the bulk plant, is that the case? A. Yes, sir.

Q. And did Mr. Helgeson operate the bulk plant as well as the retail station? A. He started to operate it and then it was turned over later to Mr. Les Carter.

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[268] Q. (By Mr. Tilbury) Mr. Perkins, referring you to what has now been marked as 274, which apparently pertains to a Centralia operation, are these some of the leases from the corporation, or to the corporation from yourself and your wife? A. Yes, sir.

Q. And do they pertain—can you tell offhand the bulk plant or the retail station or both and what it is? A. It would seem to me by looking at this lease without checking the legal description that we have reserved in here—the only thing that is in this lease is the Centralia plant, the cafe, and the other stuff is all excluded from the lease.

Q. By "plant" what do you mean? A. Well, that is the wholesale part of the plant.

Q. All right. In other words, the documents that you are looking at are leases from yourself to the corporations—

A. Yes sir.

Q. —with respect to the bulk plant only? [269] A. I beg your pardon.

Q. With respect to the bulk plant only? A. Well, that is the way it reads here.

Q. All right. A. You see I did this many years ago, and, well, as a matter of fact, Mr. Tilbury, after we did recognize the corporation I just forgot it and paid no attention to it. I just didn't even know that I now had a corporation. I didn't pay any attention to it.

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[272] Q. (By Mr. Tilbury) All right. Now, Mr. Perkins let's take a station where you had people that were—now, not using the word "your"—where there were people in the station who were paid a salary by someone, can you think of such a case during that period? A. Well, yes, I had a station in Astoria that I paid a young man a salary.

Q. All right. Now, who paid this salary? A. I did, personally.

Q. All right. Now, the Astoria station, why, was that leased to the corporations, either of them at any time?

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[273] Q. (By Mr. Tilbury) Without getting into the specifics of all the particular stations, was that station—no, first of all, who owned the land; let's take it step by step? A. I owned the land.

Q. All right. Did you lease that to the corporation at any time? A. No.

Q. Did you lease it to anyone else at any time? A. Yes.

Q. And to whom did you lease it? A. To the West—to the Westway Oil Company, Union Oil Company.

Q. Now, all right, this is at the termination of your agreement with Standard? A. Yes.

Q. Is that the time you are talking about? A. Yes.

Q. During the claimed period, was it leased to anyone, to your knowledge? A. No.

Q. And you had in there an individual to whom you paid a salary personally, is this true? A. Yes.

[274] Q. All right. Now, Mr. Perkins, with respect to other locations— A. Well, I say I paid him a salary. He had a drawing account out of the station.

Q. All right. Who supplied the drawing account? A. Well, I did.

Q. Did the station sustain the loss during the claimed period? A. Yes.

Q. Who sustained it? A. I did.

[277] Mr. MacLaury: Well, I might cut this short if counsel would be willing to accept this. I have quoted here from one of our briefs a portion of the amendment to interrogatory number two.

The Court: If you read that to me, then I can—

Mr. MacLaury: It reads as follows: "Plaintiff"—there is an omission, and then to continue the quote—"Sold his products through distributors, consignees, or lessees. However, plaintiff did engage in the retail business by operating continuously at the retail station at the main office in Vancouver."

There has been an omission in my copy. To continue the [278] quotation: "In addition"—omission, and then continue quotation—"he maintained salaried employees intermittently in retail stations throughout his area of operations. For example, from time to time, he maintained salaried personnel in retail stations at Roseburg, Astoria, The Dalles, White Salmon, Centralia, Portland, Hood River, Riddle, Aberdeen, and probably at other locations."

Mr. Tilbury: We will accept that as a fair statement.

The Court: All right. I am satisfied now. I will overrule the objection.

Q. (By Mr. Tilbury) Mr. Perkins, now, a member—let's take the stations, and instead of taking all of them, let's take Vancouver. You indicated there is a station, we will say, without identifying whose station it is for the time being, north of the City of Vancouver on the old highway; is this true? A. Yes, sir.

Q. And what is that station referred to? What name does it have? A. At the present time?

Q. Yes. A. It is referred to now as Eagle Fleet.

Q. All right. During the claim period, what title did it have? A. It was referred to as the Champion station.

[279] Q. How far north of the city of Vancouver is it? A. About a half a mile.

Q. Do you own the land there? A. Yes, sir.

Q. Was this station one that was leased—one of those leases that you identified yesterday to the corporation? By that, I mean Perkins Oil of Washington. A. Yes, sir.

Q. All right. Now, were there people in that station from time to time who were paid salaries?

Mr. Hilliard: Your Honor, I object to this—

The Witness: Yes, sir.

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[281] Mr. Hilliard: Your Honor, the big point I have, if he wants to offer claims of the corporations—and Your Honor knows our legal position on it—then I think, in the order of proof, he should offer whatever he is relying on to get the claims before the Court. If it is the assignments, then he should offer those, and then we have the order of things and we can make our record on this as we go along here without my having to state these vague objections, because I am not sure what entity he is talking about.

Mr. Tilbury: As long as Mr. Hilliard has made his point, I would like to make mine, and that is that our position is not to abandoned. This is Mr. Perkins' individual operation. It was treated as such. It was not accepted by the Standard Oil Company. They would not recognize either



corporations. The corporations were merely vehicles which, in fact, were never carried out, except for bookkeeping purposes.

The Court: Yes. The jury has been advised of your respective positions about it. Now it is just a matter of how you can get at the order of proof. It was my suggestion that possibly you can channel them in along the lines of the three entities so that when you are talking about a customer of one unit handling the books of that unit, they know who you are talking about rather than skipping from one to the other.

[282] Mr. Hilliard: That is right, Your Honor. One more thing: If he wants to talk about the corporations back and forth here, he should—I was just suggesting that in his order of proof, put in his claim of the corporations or the right to be before the Court, and then he refers to one or the other. My objection will be for specificity there and not the fact that those claims have not been shown before the Court. That is why I was suggesting that if he is, by his contentions, relying on assignment, then the order of proof would require that.

The Court: Well, he doesn't have to do that, if at all.

Q. (By Mr. Tilbury) Mr. Perkins, with respect to that station at Vancouver, the one that we are dealing with, may I ask, with respect to the employees at that station that were there from time to time, who paid their salaries?

Mr. Hilliard: I object to this. There is no time specified. It was leased and not operated by this individual, but by the corporations. I thought we just covered the point that he was going to do them individually—

The Court: Pinpoint what time we are talking about.

Mr. Tilbury: All right, sir.

Q. (By Mr. Tilbury) During the claim period, now, Mr. Perkins, in those instances where there were employees at the stations, I am merely attempting to ask you now who paid their salaries. [283] A. They were employees at the station, and they was paid—I can't say for sure, but—

whether they was paid out of the family account or whether they were paid out of the station account. I think they was paid out of the family general account.

Q. (By Mr. Tilbury) What is that, sir? A. We have one general account which we call the family payroll account. And any time there is an expense of any kind from any of the stations or salaries or for material or things like that, it was paid out of that account. Then each station or each person that had the properties would reimburse the account for what was paid out. If they would—in a piece of property that I owned, for instance, I had [284] an apartment house, and if I would have a roof put on that, they would pay it out of that account. Then I would replenish the money to the account.

Mr. Hilliard: May I ask a question or two in aid of a motion, Your Honor?

The Court: You may.

Mr. Hilliard: In whose name was this account carried? What bank name? Bank account?

Mr. Tilbury: The name of the bank? Is that—

Mr. Hilliard: No, excuse me. In whose name was the bank account carried?

The Witness: I just can't tell you what the technical name was. Mrs. Ross is there (indicating). She would know. She handled the account. We've had that account like that for many, many years, and I just can't know which—how she designated it at the bank, whether it was called Perkins Oil special account or Perkins Oil payroll account or Perkins Oil something. I wouldn't know that.

Mr. Hilliard: All right. On whose books was it carried? Was it carried on C. A. Perkins real estate operation?

The Witness: No, I wouldn't think so.

Mr. Hilliard: Was it carried on the Perkins Oil Company of Washington corporate books?

The Witness: No, I don't think it was carried on their books.

[285] Mr. Hilliard: Was it carried on L. Allen Perkins and W. M. Lennington partnership books?

The Witness: I don't think it was carried on any books. I think it was simply a family account that we had there.

. . . . .

[286] Mr. Hilliard: It isn't on there. Now, is it on any C. A. Perkins' books?

The Witness: I can't tell you what book it is on or what accounts. It is a revolving account that is just there in the bank. It is a revolving account. I first started it and put the money into it myself, and it's been a revolving [287] account there for years.

Mr. Hilliard: Well, is it your testimony that all of your business obligations are paid out of this account?

The Witness: My business obligations?

Mr. Hilliard: Yes.

The Witness: No. No, not all of my business obligations are paid out of that account.

Mr. Hilliard: Well—

The Witness: But any labor that I would hire would be paid out of that account.

. . . . .

[290] Q. (By Mr. Tilbury) While he is looking for that, I will ask you, did you and Mr. Harris and Mr. Powell reach some sort of understanding at some time with respect to the areas in which each of you were to operate under the Standard agreement? A. Did we have an arrangement?

Q. Yes. A. Yes, sir, we did.

Q. Would you look at Exhibit 4B, please.

(Whereupon the baliff handed the document to the witness.)

A. This is 4B.

[291] Q. Are you familiar with this document? I realize it is an enlargement. A. Yes, I am familiar with it.

Q. Is this something you had some part in? A. Yes.

Q. Can you identify the facsimile of, your signature there? A. Yes, sir.

Q. And what is it? A. This is a map that outlines the territory of Perkins, Harris, and Powell.

Mr. Tilbury: We would offer in evidence Exhibit 4B.

The Court: What was the number, please?

Mr. Tilbury: 4B.

The Court: Thank you. It will be received.

(PLAINTIFF'S EXHIBIT No. 4B, a map, was received in evidence.)

Mr. Tilbury: I wonder if you could put that on the board for the moment.

(Whereupon the bailiff attached the map to the easel.)

Q. (By Mr. Tilbury) Mr. Perkins, if you would come over to this area, please.

(Whereupon the witness came to the easel.)

Q. Now, I notice the date on the document appearing August 4th, 1953, is that about the date? [292] A. That is the date we signed it.

Q. All right. Now, what was the purpose of this agreement? What were you doing? A. We were agreeing on the territory which we would serve.

Q. All right. Now, you made certain marks, I gather, on this, or somebody did? A. Yes, sir.

Q. And this is your signature over here, is it, on the lower right-hand corner, together with Mr. G. R. Harris, and L. G. Powell? A. Yes, sir.

Q. What areas were allocated to you on that date? A. This area here in Northwest—in the Southwest Washington, this area here in the eastern part of Oregon.

Q. All right. Maybe you better identify the cities, if you will here, just in a general way. A. All right, this area right here takes care of everything up to and including Aberdeen and over to past Yakima and down to Pasco, not quite to Pasco, to Heppner, and then on down in the

Oregon territory to—it is not much of a city I can find there, the nearest one I could find is Richmond, and straight across that county line and then up this way and ending at Beacon Rock. That is just north of Multnomah County, ending at the edge of Multnomah County.

Q. Will you continue over to the Coast. [293] A. Then I continued over here in Oregon. I had all of this territory here in Oregon. (Indicating)

Q. I think you better define it. A. That is Clatsop County, including Astoria and Seaside and Rainier and that part of the county in there—not Rainier, I am in error about that. We did not go to Rainier, we went down to Westport.

Now then, in here I had this strip of territory starting at the Siletz and going straight across, well, I don't see any town there, but straight across and then down. (Indicating) It takes in the towns of Albany and Lebanon and Corvallis and Junction City and right down close to Eugene there.

Q. Apparently there is something here that is surplus. What is the purpose of that? A. There is an account there that Harris and Powell had been serving and they requested to continue serving it, which we gave them a letter to continue servicing that account.

Q. What city was that? A. That is the City of Philomath. Now then, we started in down here north of Reedsport and we went across there and then up right close to Eugene, almost to the city limits of Eugene, and straight across. I thought I might see a town over there. I don't see a town over there, but [294] it takes in everything and then right straight due south to the California line and across the California line and up to the coast.

Q. All right. Did you have all of the Washington end of the business allocated to Champion group? A. Yes, all the Washington end.

Q. You had most of Southern Oregon, except shown by Harris and Powell here? A. Yes.



Q. And then you had a strip in the middle around Albany and Corvallis and Lebanon, and the like? A. Junction City and Harrisburg and all of that territory in there.

Q. All right. Now, did this plan remain pretty much true during the claim period, '55 through '57? Was it pretty much the same or were there changes? A. I don't believe there was any changes.

Q. All right. Now, did Mr. Harris and Mr. Powell and the Perkins, yourself, Clyde Perkins, pretty well respect the others' territory? A. Yes, we did respect the others' territory. There was one change that we had made. We had given them the right to go into our territory in Philomath. They gave me the right to build a service station in the City of Portland out in the southwest part of the city, in St. Johns.

[295] Q. Is that southwest part, are you sure about the St. Johns part? A. Is that southwest?

Q. Well, I don't believe St. Johns would be regarded as southwest, no. Are you referring to the station at North Burgard Street? A. That isn't southwest?

Q. No, I don't believe you would call it southwest. A. Well, maybe you call it northwest then. What about northwest?

Q. All right. What is the address of the station? A. I can't tell you the address.

Q. All right. Can you identify it in terms of what might be around it so we have the area clear? A. Well, it is not quite directly, but it is across the street from the Continental Can Company.

Q. All right. And that is a service station? A. That is a service station and also a large truck station there.

Q. And that truck station was used by whom? A. By the Portland Motor Transport.

Q. Did they have their garage near by? A. Yes, sir.

Q. And there were pumps out in front of it?

Mr. Mac Laury: I object to leading, Your Honor. Let [296] the witness describe the station.

Q. (By Mr. Tilbury) Were there pumps nearby? A. We wanted to build a station and Mr. Harris and Mr. Powell gave me the—

Mr. Mac Laury: (Interposing) I object, Your Honor, to what Mr. Harris and Mr. Powell gave him the right to do. If it is in some document here, why, we can look at it. It doesn't bind Standard Oil Company.

Q. (By Mr. Tilbury) There wasn't a document? A. No document at all.

Q. All right. While you are there, Mr. Perkins, as long as we have the picture, would you mind looking at what has been marked and received as Plaintiff's Exhibit 252, and I realize you haven't had much of a chance to study this, but—

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Q. (By Mr. Tilbury) Mr. Perkins, will you identify for us, [297] please, the location—first, let's take the station you talked about earlier, the one north of Vancouver. Where would that be, sir? A. North of Vancouver, it would be right there. (Indicating)

Q. All right. Did you have other stations that were supplied by products which you obtained from the Standard Oil Company in the City of Vancouver? A. Yes, I did.

Q. Where were they? A. I had one at 26th and Kauffman.

Mr. Mac Laury: May we have it specified, the witness is talking about himself personally, is he talking about one of the corporations?

Q. (By Mr. Tilbury) Go ahead, Mr. Perkins. A. I am sorry. Did he ask me a question?

Mr. Mac Laury: I am asking the Court for a ruling that the witness specify whether he is talking about himself personally or a corporation.

The Witness: I was talking about myself personally, if that is what you wanted to know. He asked me where my station was.

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[298] Q. (By Mr. Tilbury) I will try to ask him this question, if you will permit it.

Mr. Perkins, generally speaking, were most of the stations that you owned leased to the corporation in 1952, and these are the documents you identified the other day? A. Yes.

Q. Now, was this one in that category? Was this one where you owned the land and leased it to the corporation? A. Yes.

Q. All right. Now, can you identify the location of that station? A. You are talking about the main plant; that is just right there at the edge of the city limits of Vancouver. Now, there is another station that is right here at 26th and Kauffman.

Q. That is the one that you said where you owned the land and leased it to the corporation? A. Yes.

Q. All right. When I use the word "corporation" in the [299] sense, is a fair statement to say anything in Washington would be Perkins Oil of Washington and anything in Oregon would be Perkins Oil of Oregon, is that correct? A. Yes.

Q. Were there others? A. Yes, there is one at Manor Highway, right in the city limits, this highway here. (Indicating)

Q. What kind of station was it? A. A service station.

Q. I see. Is this one where you owned the land and leased it to the corporation? A. Yes, I own all of these, the land. There is one right out here to the edge of it here which I owned all of the land and all of the facilities.

Q. Did you lease it to the corporation? A. Yes.

Q. Will you identify that in terms of some other way other than just at the edge? A. I think we call that Ridgefield Junction. There is one right here—wait a minute.

Q. The Ridgefield Junction on the highway north of the city? A. Yes, on '99.

Q. That is still on the highway? A. It has just been torn down the last month or two by the [300] state.

Q. All right. Thank you. A. I have one right in the City of Camas.

Q. Mr. Perkins, would you mind putting a "P" at the locations you have located so it will be clear? Maybe you better do that over the noon hour, rather than take the time now, and get the locations.

Q. Whichever way you want. Then I have another one right here at Washougal. (Indicating)

[301] Q. (By Mr. Tilbury) Maybe you had better, if you can do it, now put a "P" at those locations where the service stations are that you have identified? A. Well, this is a small map, and I will do my very best. I might miss it a street or two, assuming that this is the city limits right here (illustrating), which I assume that it is because that is Bonneville Power right there (illustrating). So, I will put one—why can't I just draw a round ring?

Q. All right. A. I will draw a round ring right there (illustrating). This is one out here (illustrating), if I am correct on that, because that seems to be just about the area. It is right there (illustrating). I have one on this highway that is right there (Illustrating). I have one right out here (illustrating). I had one right out here (illustrating). Let's see if I can find the highway. Right at that junction there. I believe that is the junction. I could be wrong on that, but the streets aren't marked, but that looks to me like the street the junction.

Q. What is that called? A. Dollar Corners.

Q. All right, now— A. I might be off a few streets on that.

Q. Now, as you reach these, if you can tell us, is this [302] where you owned the land and leased it to the corporation, if you recall? A. That station was never leased to the corporation because I owned the land and loaned the boys some money to build this station and they built this station.

Q. Now, maybe you better identify "the boys" for us again? A. That is Allen Perkins, my son, and my nephew.



Q. Now, let me ask while we are on that subject, did they have a particular name that they called these stations that they owned? A. I believe they called them Perkins and Lennington.

Q. They started to construct some stations at some time, did they? A. Yes, they did. We started a building program along about '54 and '5, '55.

Q. You had better not use the word "we". A. I won't say I started the building program and assisted them in a building program.

Q. All right. Now, there were some stations that your son and your nephew built under the names of Perkins and Lennington? A. Yes.

Q. All right. If we reach a situation like that, you tell us; and these were constructed pretty much towards the [303] latter part of your relationship with Standard or towards the beginning, or when; I am now speaking of Perkins and Lennington? A. Well, they were, they were—they started—we started this building program. I started the building program when our gallonage started to decline directly after we lost the Truax account.

Q. And that is what year? A. That was '54. Now, we built in '54 and in '55. I built stations, and they built stations trying to recover our gallonage. Now, on the Hood River station, I owned the land, and the same thing, they built the station.

Q. By "they," you mean Allen Perkins and Marvin Lennington? A. Perkins and Lennington built the station.

Q. All right. Now, Mr. Perkins, will you continue on with those stations you are identifying? A. I will identify a station here, a station right there (illustrating) at 26th Street, some place along there. It is pretty hard for me to locate it from here, right in there, I guess (illustrating). Now, I have a station right here in the heart of Camas right down in Camas. I can't tell you by this what it means here, but it is right there, (illustrating), right on the main



—it is right on the [304] main highway down here (illustrating). Right down there, right on the highway.

Q. Now you had better identify where "right down there" is? A. Well, it is on the highway. The highway goes through Camas. I mean right on the highway.

Q. Now, what did you call that station? A. Well, we purchased that from the Coops, and I think we called it the Coop Station; and just to the east of Camas at the edge of Camas we had another station on the street on what is called Third and Franklin, which is right on the highway; still there.

Mr. Hilliard: Your Honor, if counsel would provide for us or specify the ownership, at least we wouldn't have to object.

Q. (By Mr. Tilbury) Would you specify for us, please, the ownership? A. Yes. I am talking about the one I owned, I had owned. I owned the property, the building and all the facilities.

Mr. Hilliard: And leased it to the corporation?

The Witness: They were in the lease to the corporation. Right here at Washougal, right on the highway in Washougal, I had another station. I owned the real property and all of the facilities, and I leased half of that to the [305] corporation.

Q. (By Mr. Tilbury) Which half? A. The east half. The reason for it is because I had another tenant in the last half, and they had taken the part that didn't have the tenant.

Mr. MacLaury: Well, you leased the part—so we will have some specifications, what was it, a retail outlet or a service department?

The Witness: They took the part that had the retail pumps in it.

Mr. MacLaury: When you say "they"?

The Witness: I am talking about Perkins and Lennington.

A. (Continuing) Now, then, in this particular area, I had other stations scattered out around here, but in that area as far as I can remember—oh, yes, I had one right out—well, let's see if I can get this one. It was on the main highway. Well, I guess it was right, right in there at Battleground. I guess it would be right in here called Union Corners (illustrating), and I had another station that was not leased. Now, that station was not leased to the boys. I had another station at that time right at the edge of the city limits, right here (illustrating) called—that was right—I hope—these streets aren't numbered, but I hope I'm getting this somewhere near [306] around right. But, I would say it was right in right there. Right there (illustrating). I see a building right there and I think it is my building right there (illustrating).

Q. What is it called? A. It is called Three Corners, that was not leased by the corporation. The reason for that was because I had other tenants already in there and didn't want to disturb them.

Q. What kind of a building was it? A. It was a combination grocery store and service station.

Mr. Hilliard: For clarification on the last two, could I ask the witness: They had already been leased to other tenants?

The Witness: Yes.

Q. (By Mr. Tilbury) By yourself? A. Yes, by myself.

Q. The corporations were not in that? A. Not in it at all.

Q. All right. Now, could you show us the location of the one north Portland, North Burgard Street or can you pick that out? A. Well, let's see. Where is the river? There are no streets marked on this thing here. It must be right. It must be. I would say it is right there. (Illustrating) Because there is the railroad track going across there, and [307] I know the railroad track was very close to us there. I think that is possibly right there where it was. There's no streets here (illustrating), and I could be wrong in my positive identification.

Q. Did you own the land? A. Yes, I owned the land.

Q. Was it leased to Perkins Oil of Oregon in this case, if you recall? A. I leased it to the Portland Motor Transport Company.

Q. All right. And this you have identified as being a corporation, or do you know? A. That was owned by my son and a Marvin Lennington; there was another party that had a very small interest, Flay Silliman, and they gave him some stock.

Q. Flay Silliman? A. Flay Silliman.

Q. Now, subsequently, they have withdrawn from that company, have they; by "they" I mean Mr. Allen Perkins and Mr. Marvin Lennington? A. Yes, they don't own it any more.

Q. All right. Now, have we covered the waterfront, or are there others? A. Well, you are talking about during the claims period?

Q. Yes, sir that's right. [308] A. I think that as far as I know, as far as I can remember just now. Oh, yes, I had—we had another one. Now, wait a minute. I only had an interest in that. I had it just past my station on the other side.

Q. Oh, that was products that you obtained from Standard? A. Yes.

Q. Where would it be located? A. Right across the street from the station. It is right in the city of Hazedel.

Q. What kind of interest did you have in that? A. Well, it is pretty hard to tell you what kind of interest I had because I helped my nephew buy it, and he wanted to own it, and I helped him buy it, and that would be right in Hazedel there.

[317] Q. (By Mr. Perkins) Directing your attention to Exhibit 275, the document just referred to, is this the so-called family payroll account? A. Yes, sir.

Q. And was this used for the payment of salaries among other things? A. Yes, sir.

Q. And would employees that you hired individually for some other reason other than the petroleum business be paid in this account? A. I beg your pardon?

Q. Suppose you had employees that did work for you in some other capacity than the petroleum business. Were they paid from this account from time to time? [318] A. Yes, sir.

Q. All right. Is this account something that would be maintained primarily by Mrs. Maxine Ross, your book-keeper? A. Yes, sir.

Q. Has Mrs. Ross been with you a number of years? A. Oh, for over thirty years.

Q. Is she your individual employee? A. Yes, sir.

Q. Has she been for this some thirty-three years? A. Yes, sir.

Q. Thank you.

Mr. Tilbury: We would offer in evidence Exhibit 275.

The Court: Any objection?

Mr. Hilliard: May I ask a question or two about that.

The Court: You may.

Mr. Hilliard: You mentioned that as a family account. Who is in that family you are talking about, who comprises this family for which this is an account?

The Witness: Well, I use that name, Mr. Hilliard, because I started this account in the early 50's myself, and then later on I took in Marvin and Allen into this account. That is why we all called it the family account.

Q. (By Mr. Tilbury) Then you are speaking of yourself, Marvin Lennington, and Allen Perkins? A. That is right.

[319] Q. And when you say it is our family account, do you mean that you each draw checks on an account that are recorded in that book? A. Just for payroll only.

Mr. Hilliard: Payroll of whom? What payroll? What company? What organization?

The Witness: Any company. Any payroll that we might have. Anyone that might work for any of us or one that

would work for the three of us. It would all be paid out of this account.

Mr. Hilliard: And on the bank account, when you draw a check and record it there, at whose name is that bank account?

The Witness: In whose name is the bank account?

Mr. Hilliard: Right, on which those checks are drawn there.

The Witness: I believe the bank account is in the name of Perkins and Lennington.

Mr. Hilliard: That is Perkins and Lennington, a partnership, isn't it?

The Witness: No, that wouldn't be a partnership. We just use that name to designate from other bank accounts that we have.

Mr. Hilliard: The Perkins there is Allen Perkins, isn't it?

[320] The Witness: No, it is not Allen Perkins any more than it is me.

Mr. Hilliard: That is not L. Allen Perkins and Marvin Lennington account?

The Witness: No.

[321] Mr. Hilliard: How about the corporations, do you see any checks there that are corporation employees, payments to corporation employees?

The Witness: Well, there are checks here to all employees, whether they were corporations or not.

Mr. Hilliard: How about Don Raymond? Would you check through there and see if there are any checks paid to Don Raymond?

The Witness: Don wasn't in this as a checking account. He had a drawing account and drew from our own account in Astoria.

Mr. Hilliard: The answer is that Don Raymond, there are no checks recorded to Don Raymond?



The Witness: That I don't know. I haven't looked through this. I don't know whether there are or not. This is a long list of checks here over a period of years, and I don't—I would have to go, search everyone of them first to see if his name is in here.

Mr. Hilliard: Did you issue checks on that account or was it only the bookkeeper?

The Witness: Just the bookkeeper.

[322] Mr. Hilliard: So you have no personal knowledge of the identity of the bank account on which it is drawn. You are merely saying something that your bookkeeper told you at the noon hour.

The Witness: Well, I know of this account and I sign the checks.

Mr. Hilliard: You did sign the checks?

The Witness: Yes.

Mr. Hilliard: Did you sign the checks for the corporation?

The Witness: It was not signed by the corporation. This was a, if I remember right, it was not a corporation check.

Mr. Hilliard: You mean none of those checks?

The Witness: If I remember right. I am sure I don't know, Mr. Hilliard. You would have to get the accountants to explain this to you fully.

Mr. Hilliard: Let me ask you this, can I trace any payment from there as payment to employees on your personal records of C. A. Perkins?

The Witness: I am sure that you can if you are an accountant. I am sure you can.

[325] Mr. Hilliard: In other words, you can't identify any names on there in the capacity of being paid by you to work on the station?

The Witness: Yes, sir. Here's one right here. Here's Howard English. I recognize him very well.

Mr. Hilliard: To what year is that?

The Witness: That is in November of 1957; November the first, 1957.

[326] The Witness: Howard English did a considerable amount of work on my service stations also.

Mr. Hilliard: Can you explain to me how David H. English is carried as an employee on the payrolls of the Perkins Oil Company of Washington?

The Witness: I don't know how you would carry it. I see his name here, and I know he worked directly for me.

Mr. Hilliard: If I told you that the Perkins Oil Company of Washington corporate payroll expense carried David H. English as an employee for the year ending 1957, would you agree with that?

The Witness: They could have. He done some work for the corporation too.

Mr. Hilliard: He was an employee of the corporation?

The Witness: Well, he wouldn't be a steady employee [327] because both of these people were maintenance people. He might have worked two days for me and two days for them and somebody else.

Mr. Hilliard: Anybody else on there?

The Witness: I'm just trying to glance through to see.

Mr. Hilliard: Would you?

The Witness: Do you see King?

Mr. Hilliard: How do you spell that?

The Witness: K-i-n-g.

Mr. Hilliard: What year did he work?

The Witness: October, 1957.

Mr. Hilliard: And was he operating the service station?

The Witness: No, sir. Mr. King was a carpenter.

Mr. Hilliard: Well, where did he do some work for you.

The Witness: Mr. King did work on my residence, and he did work on some of my service stations.

Mr. Hilliard: Do you have anybody on that list that operated a service station for you as an employee?

The Witness: That operated a service station?

Mr. Hilliard: Yes.

The Witness: Oh, yes.

Mr. Hilliard: As an employee of yours?

[328] The Witness: Everyone that worked in our service stations is in this list.

Mr. Hilliard: I didn't ask you about "our service stations"?

The Witness: In my service stations.

Mr. Hilliard: As an employee of yours?

The Witness: Yes, in my service stations.

Mr. Hilliard: And you are saying they are shown to be an operator of a service station and an employee of yours on that list; that is, of you personally, Mr. Perkins?

The Witness: Well, I can't tell you how she carried it, but I know they are on this list here. I can't tell you how they carried it, but they are on here.

Mr. Hilliard: Would you tell the name of the employee of yours that operated a station?

The Witness: Well, there is a lot of names on here, Mr. Hilliard, that I don't recognize at all. Here is Bill Perry, yes. Now there's a man that worked on our, in our service station. I remember that very well.

Mr. Hilliard: Now, your telling me that Bill Perry was an employee of yours?

The Witness: Yes, at the company owned station in Vancouver.

Mr. Hilliard: Well, now, Mr. Perkins—

[329] The Witness: At our own station.

Mr. Hilliard: I am trying to distinguish between the corporate stations and something you operated personally. Now, Mr. Perry was an employee of the Perkins Oil Company of Washington, was he not?

The Witness: Well, that could've been. I hired all of the people that worked for the stations; and in what category they went into, that I can't answer.

Mr. Hilliard: Well, you can't—there are none on that list that worked for you personally, is that not true?

The Witness: Anybody only that worked for me personally?

Mr. Hilliard: As an operator of a service station?

The Witness: Well, it depends on what you mean, Mr. Hilliard.

Mr. Hilliard: Well, I will explain what I mean, Mr. Perkins, worked in a station operated by you?

Mr. Tilbury: Your Honor, we must object to this for the reason that Mr. Hilliard apparently is attempting to get Mr. Perkins to accept his theory, which apparently is the corporations were something all together different from Mr. Perkins. It is our contention at that time, and I think the record indicates there was no such a distinction. It was Standard's choice itself by declining to recognize the corporation. Therefore, he operated individually.

[330] The Court: I might suggest to you, counsel, that you want counsel to accept your theories.

Mr. Tilbury: Your Honor, that is the difference.

The Court: He may continue.

The Witness: Now, there's a lot of service station operators in here, but I don't know which account replaced the money to this account here. That I wouldn't know, unless somebody would run out these distributions.

Mr. Hilliard: Well, may I ask you this question once more, Mr. Perkins; do you know as a fact that there is not on that a list that you have in front of you any individual working as an employee in a station operated by you as an employee of yours?

The Witness: Well, Mr. Hilliard, I figured they were all employees of mine.

Mr. Hilliard: Well, Mr. Perkins—

The Witness: And I do today, too.

Mr. Hilliard: Excuse me, Your Honor. That is non-responsive now.

Do you know the distinction between the corporations and yourself individually?

The Witness: Yes, I know the difference between a corporation and an individual.

Mr. Hilliard: All right. Now, you as an individual operator of a station, isn't it a fact that there is no

[331] name listed on that payroll account book expense book reading account book, expense book that was an employee of yours?

The Witness: I am unable to answer that question.

Mr. Hilliard: Of your stations?

The Witness: I would be unable to answer that question. You want—

Mr. Hilliard: I say the distribution of the employees?

The Witness: Now, Mr. Hilliard, after the—after the corporation was turned on.

Mr. Hilliard: I object to that.

The Witness: We just forgot it. You are asking me a question. I am trying to tell you.

Mr. Hilliard: No, I am not trying to ask. I move to strike that as a conclusion of his.

The Witness: We forgot the corporation entirely and operated as we had been for years and years and years.

[334] Q. (By Mr. Tilbury) I believe that my notes are correct that you indicated yesterday that you had formed these two corporations with the hope and expectations that eventually your family, that is, your son and your nephew would be taking over the operations? A. Yes, that's right.

Q. (By Mr. Tilbury) The contract in 1953, was that in your individual name? A. Yes, sir.

Q. And was that prepared by attorneys for the Standard Oil Company as far as you know? [335] A. Yes, sir.

Q. Now, in view of the fact that the corporations were not on this contract, why did you continue to operate your books on the basis of two corporate set-ups? A. Well, I had two very definite reasons. The main reason for carrying on with the corporations, we—was on account of the tax situation; then we went ahead and had all of our stationery printed, printed, and we have different taxes in Oregon and different taxes in Washington; and we just continued that way on account of the tax situation.



Q. During the claimed period in particular, did these corporations make money themselves? A. No, these corporations did not—

Mr. Hilliard: I object to this, Your Honor.

A. —ever make money.

Mr. Hilliard: I object to the testimony about the corporations and whether or not they make money.

The Court: The objection will be sustained.

Q. (By Mr. Tilbury) Well, there is no situation, Mr. Perkins, where there were obligations to be paid, corporate obligations—

Mr. Hilliard: I object to the leading question.

Q. (By Mr. Tilbury) —where there were corporate [336] obligations for sometime?

What was the source of the money the corporations operated with in order to pay their obligations? A. The corporation didn't have any money. I put money in.

Mr. Hilliard: I object to this, Your Honor, as not bearing on any issue in this case.

The Court: Well, I didn't know. He may continue.

A. (Continuing) When the corporations run out of money, I personally put money into it to keep it going.

Q. (By Mr. Tilbury) Now, was some of this money repaid to you in all instances or in some instances? A. Some of it might have been paid in some instances. We wound up with a large deficit to me.

Q. Where you made advances of this kind, did the corporations pay interest to you? A. I never charged any interest.

Mr. Hilliard: Your Honor, we object to the arrangement between he and these corporations.

The Court: What do you claim for them, Mr. Tilbury?

[337] Mr. Tilbury: Well, Your Honor, of course, it is our theory that the corporations are not properly in the case at all, but nevertheless—because it is our theory that the discrimination occurred against Clyde Perkins individually.

The Court: Well, what does that have—I assume that if the corporation borrowed money, it would pay interest, but I don't think that has anything to do with—

Mr. Tilbury: Well, Your Honor, I think Mr. Perkins said that he advanced money to the corporations for their obligations. It relates to his own participation, and, of course, it is only on the ultimate theory that if it is necessary to go into the corporation, that is still something that he had to stand back of, and, in fact, they were his alter ego and own agents.

The Court: Are you claiming that the money that he may have advanced to the corporation is an element of damage in the case that was lost by him?

Mr. Tilbury: I think it shows a loss.

The Court: Well, then, get to the specific amounts and dates and not just generalities about it. It doesn't help the jury to have that type of thing.

Mr. Tilbury: Well, Your Honor, I think the accountants are best able to give the specific amounts.

The Court: I think so too.

Mr. Tilbury: So I will reserve it for this time.

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[339] Q. (By Mr. Tilbury) Mr. Perkins, from time to time, I assume it was necessary to hire people that managed retail stations where you owned the land. In those instances, did you hire that individual or did someone else?

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The Witness: I personally hired all the help.

Q. (By Mr. Tilbury) Would that include every employee in the stations? A. No.

Q. All right. A. That would include the managers only.

Q. Did you receive permission from the corporations to hire these people? A. Never asked anybody permission.

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[340] Q. (By Mr. Tilbury) Would this have been true for a number of years, Mr. Perkins? A. Always has been that way.

Q. All right. A. Since I started business.

Q. With respect to situations where credit was requested by a potential customer who bought products that you obtained from—initially from the Standard Oil Company, who made the determination as to whether credit would or would not be extended?

The Witness: I passed on all the credit.

[341] Q. (By Mr. Tilbury) Did you receive permission from the corporations to pass upon such credit? A. I didn't ask permission from anybody.

Q. Was this also true for a number of years? A. All the time I was in business.

Q. Now, Mr. Perkins, if I might take you back to the period of time just before the signing of the 1956 agreement between yourself and the Standard Oil Company, did you, without relating the conversations or all of the circumstances, contact other potential companies with regard to obtaining petroleum products? A. I did.

Q. And did you contact the Signal Oil & Gas Company, among others? A. I did.

Q. Where did you contact them?

Mr. MacLaury: Well, Your Honor, I am going to object to this line of questioning. It is not material to any question of price differential in this case. The fact of the matter is he did sign the 1956 contract, and who he talked to before then has nothing to do with the issues here.

Mr. Tilbury: Your Honor, I can connect it up, and I can show price differential.

The Court: You went into that. He may answer.

Q. (By Mr. Tilbury) Mr. Perkins, where did you contact them? [342] A. In Los Angeles.

Q. Under what circumstances, without telling us the conversation? A. Well, the circumstances was that I was taken there by another party to see if I could make a connection for petroleum products.

Q. All right. Would you identify the individual who took you there? A. Mr. James Lewis.

Q. And who was he? A. He was the President of the Independent Refiners Association.

Q. Who did you meet with at the Signal Oil & Gas Company? A. Mr. Marsh.

Q. Would you identify him. A. Well, I only met the man once. It's hard for me to identify him, except in this way: Mr. Marsh had in the building that he had the offices in, it is a large building, many stories, and he had his office on the first floor or on the mezzanine floor. I believe I'd recognize him if I could see him, but he had a rather large nose and—well, I couldn't describe his physical attributes right at this minute.

Q. What was Mr. Marsh's first name? A. I don't know as I could remember his first name.

[343] Q. Do you recall his position with Signal Oil & Gas Company?

Mr. Hilliard: Your Honor, this witness has already—

The Witness: He was one of the executives.

Mr. Hilliard: Excuse me. There is a lack of knowledge here. His relationship with that company and what he speculates as to the position of the individual could be in no way binding on the defendant, and I object to the relevancy—

The Court: Well, we don't know whether it will be or not.

Mr. Tilbury: Mr. Perkins—

The Court: I have a representation of counsel that it will be tied in with the defendant, and with that representation, he may proceed.

A. I just can't tell you his title just now, but he was one of the executives in the business.

Q. All right. Did you discuss the possibility of some sort of contract with the Signal Oil & Gas Company for petroleum products? A. Yes, I did.

Q. And was an offer extended of some kind to you? [344] Well, an offer—an offer was extended.

Q. What sort of offer was it?

Mr. Hilliard: We object to that, Your Honor. The offers he might have received from someone else would have no relation to the issue of his contract with Standard Oil.

Mr. Tilbury: This is an issue, I believe, Your Honor, that you ruled on previously on page 1709 of the prior transcript, and we were permitted to develop this information.

The Court: Yes. You may proceed.

Mr. Hilliard: Your Honor, may the record show clearly that any statement here would be hearsay as to this defendant and absolutely—

The Court: I understand that at this stage, of course, it would be, and under the state of the record in this case, but I have the representation that it will be tied up into the conduct of the defendant or someone.

Mr. Tilbury: Yes, sir.

Q. (By Mr. Tilbury) Mr. Perkins, can you compare, if you will, the offer which was made to you the Signal Oil & Gas Company with the Standard contract? A. The offer—

Mr. Hilliard: Excuse me. Your Honor, Standard's contract, at what time and with whom? This time and place, there is no specification—

The Court: It is highly important, and I understand [345] that.

Mr. Tilbury: I agree.

Q. (By Mr. Tilbury) I am now speaking of the standard contract which you had at the same time. [346] A. Well, prior to the signing of the 1956 contract.

Q. (By Mr. Tilbury) The same time you had the discussion with Signal Oil & Gas Company? A. I went to Los Angeles and contacted many oil companies and in that group was the Signal Gas & Oil or Oil & Gas.

Q. All right now, would you compare for us, please, the offer which was received by you from the Signal Oil & Gas Company with the contractual relationship that you had with Standard? A. They offered me a better price than I was getting from the Standard Oil Company.



Mr. Hilliard: I object Your Honor, and move to strike that; irrelevant, immaterial, incompetent, and it is hearsay.

The Court: May I have the answer, please.

(Whereupon the reporter read the previous answer.)

The Court: I will leave that in; as I understand it, you still represent this will be carried to the defendant.

Mr. Tilbury: Yes, sir, I will make the comparison.

The Court: Proceed.

Q. (By Mr. Tilbury) Mr. Perkins, to what extent was it better?

Mr. MacLaury: Your Honor, it seems to me he ought to connect it up before we go into the details.

The Court: I suppose that will develop in some of his [347] depositions, is that it?

Mr. Tilbury: Yes.

The Court: No, I won't interrupt this witness' testimony to go forward to the reading of the depositions. He may continue.

The Witness: I think it was about three-quarters of a cent better per gallon.

Mr. Hilliard: We move to strike the speculative answer, Your Honor. The witness either knows or he does not.

The Court: I don't know from the witness' statement when he uses the word, "I think," whether he is just making a supposition or if that is his expression of belief or what, and until he does tell us, I will strike it from the record and you are instructed to disregard it.

Q. (By Mr. Tilbury) What is your belief as to the matter? A. Well,—

Mr. Hilliard: (Interposing) I object to belief.

The Witness: I know exactly what it was.

Mr. Tilbury: Just a minute.

The Court: He says now that he is stating from memory. He may answer it.

The Witness: I know exactly what it was and I was trying to average it up between the two grades of gasoline. It was .75; that was the three-quarters of a cent on regular, and eight-tenths of a cent on ethyl.

[348] Q. (By Mr. Tilbury) By that you mean that this was—I am not trying to lead you, I am trying to shorten this up—that it was that much better than Standard's contract that you had at that time? A. Yes, sir.

Q. Now, why didn't you—by the way, do you know at that time from which source the Signal Oil & Gas Company was obtaining its products? A. Yes, sir.

Q. Which source? A. Standard Oil.

Q. Of California? A. Yes, sir.

Q. Now, did you have occasion to—I probably should ask you, why didn't you make a contract with them at that time?

Mr. MacLaury: Your Honor, I think this is completely irrelevant and immaterial as to why this person didn't make a contract with Signal Oil & Gas Company in 1956. We are talking here about a relationship between Standard Oil Company and this plaintiff.

The Court: Yes, if it is based upon a matter of business judgment of this witness, it doesn't help us any. If it was because of some statement or action of the defendant, it does help us. I don't know. He will have to answer and I will have to deal with it.

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[349] Q. Did you, Mr. Perkins, have occasion to discuss this conversation that you had with the Signal Oil & Gas Company, with any employee of the Standard Oil Company? A. Yes, I did.

Q. Under what circumstances? [350] A. I discussed it with Mr. Johnsen; I discussed it with Mr. Vesper before we signed the 1956 contract.

Q. Where did this discussion take place? A. In their offices in the Standard Oil Building.

Q. In San Francisco? A. Yes, sir.

Q. All right. Can you tell me what was said by the Standard Oil representatives—incidentally, now Mr. Johnsen, you mean August Johnsen and Vesper is Howard Vesper? A. That is right.

Mr. Hilliard: I object to that question on the various grounds and for the reasons mentioned yesterday so far as

any conversation with that employee of Standard. There has been no showing of authority to make the particular statement and no express or implied authority, and in addition, any conversation about an offer he received somewhere else would not have any bearing on any issue in this particular case.

The Court: It may or it may not. It will be overruled.

Q. (By Mr. Tilbury) Well, I am merely asking what was said by any representative of Standard at the time you held [351] this discussion that you have just mentioned? A. Well, we had a long discussion, a very lengthy one, lasted for some time, and I told them my situation and what I had learned, and they denied it, and I wanted them to increase my margin, and they said that they would not increase it because I was buying at identically the same price as the Signal Gas & Oil, and they would not be permitted to sell me gasoline lower than they sold to Signal Gas & Oil.

Mr. MacLaury: Your Honor, I move to strike that response. It is immaterial to any issue. It is irrelevant and secondly it is a statement of an employee of Standard to whom there has been no showing that he was authorized to make the statement. It is highly prejudicial. Your Honor.

Mr. Tilbury: If Your Honor wishes, I could read at this time the deposition to identify himself.

The Court: No, I will abide by the ruling. The motion will be denied.

Q. (By Mr. Tilbury) Mr. Perkins, did you have any subsequent discussions with any of the representatives of Standard with respect to the same thing? A. Yes, I did.

Q. Under what circumstances and where? A. Well— [352] Q. And when? A. I had a discussion in the fall, late fall of '56, with Mr. Hargens and Mr. Johnsen. Mr. Johnsen was President of the S.O. Company. I don't know what Mr. Hargens' title was. Mr. Hargens came to my hotel and picked my wife and I up and took us down to the

penninsula to Mr. Johnsen's residence. We spent the entire afternoon. We talked about many things about the oil business. That evening we went out to dinner. Mr. Hargens and Mr. Johnsen got into a controversy, and it was getting to be quite heated, and Mr. Johnsen said to Mr. Hargens—

Mr. MacLaury: Your Honor—

The Witness: Said in my presence—

Mr. MacLaury: Just a minute, please, Mr. Witness: Your Honor, I make the same objection. There is no demonstration here that Mr. Johnsen had any authority to make the statement about to be recounted and the witness himself said that he did not know what Mr. Hargens' position with the company was.

The Court: I understand this conversation was in the presence of Mr. Johnsen.

Mr. Tilbury: Yes, sir.

The Court: He may answer it.

The Witness: Mr. Johnsen said, they were arguing about the Regal coming to the Northwest or the Signal Gas & [353] Oil coming to the Northwest and Mr. Johnsen said to Mr. Hargens in my presence, he said, "You have the authority to do it and I want you to stop Regal from going to the Northwest because, if they do, they will wreck that market because they have got a better price than either Clyde or my other jobbers have up there, and if they come up there, they will do the same thing there they have done other places. They will wreck that market."

Mr. Hilliard: We move to strike that entire statement.

The Witness: That was the conversation.

The Court: The motion will be denied.

Q. (By Mr. Tilbury) Did they mention what other places they had in mind? A. Phoenix in particular.

Q. All right. Did you, as a result—anything else said other than that? A. Well, after the conversation was over, it kind of broke up in a row and Mr. Johnsen or Mr. Hargens and his wife, Ruth, took Mrs. Perkins and I back to the hotel in San Francisco and that was the end of that night.

Q. All right. As a result of that conversation, what did you do? A. I went to Phoenix.

Q. For what purpose? A. I made my own investigation and found out what Mr. [354] Johnsen said had been true.

Mr. Hilliard: Your Honor, we are getting completely beyond any area involved in this lawsuit. Phoenix would not have any bearing on any issue in this case.

Mr. Tilbury: Your Honor—

The Court: Members of the jury, the witness' statement to the effect that, having gone to Phoenix, he found out what Mr. Johnsen said was true is unresponsive to any question. It is a merely voluntary statement. It is his conclusion. It is stricken from the record and you must disregard it.

[355] Q. (By Mr. Tilbury) Did you have any subsequent discussion with the Standard people with respect to this? And if so the time and place and the circumstances? A. Well, Mr. Tilbury, that was the point of discussion continuously with them time after time, and I can't enumerate all of the dates, but during that year and the first part of '57 we were down there continuously trying to get relief and that was the real topic of conversation and the real subject we were talking about.

Q. Did you take this up with the general sales manager, Mr. Cuyler? A. I talked to Mr. Cuyler and I talked to Mr. Vesper, and I talked to Mr. Johnsen.

Q. What did Mr. Cuyler say to you? A. Well, Mr. Cuyler he sidestepped the matter because he said it was in Johnsen's department to handle it; one day Mr. Johnsen took Mr. Powell and Mr. Harris and Allen Perkins and myself and we went up to Mr. Vesper's office, and I talked to Mr. Vesper. We had a long conversation, and I told him that I insisted on getting the same price that the Signal got, and I wanted the same subsidy that the Signal Oil Company got.

Mr. MacLaury: Your Honor, I move to strike that last testimony. The only issue here is did in fact Standard



Oil charge a differential in price, and all this conversation as [356] to what this gentleman wanted and what he insisted on, and the wranglings, the negotiations, and quarrels have no probative effect here.

The Court: I permitted some of this testimony to go in to show inducement and the preliminary matters leading up to the '56 contract, as I understood this testimony was for.

Mr. Tilbury: Yes, I think most of it is.

The Court: Is that correct?

Mr. Tilbury: Yes, sir.

The Court: Now, what do you claim for this line of testimony right at the moment?

Mr. Tilbury: Well, I'm just trying to develop all of the conversations he might have had.

The Court: Well, we will be here a long time if you do that. I think that you have exhausted the area of preliminary negotiations in the contract. It is all branded and melted in—

Mr. Tilbury: All right, Your Honor.

The Court: —melted into the final contracts. I will conclude any further inquiry into that.

Mr. Tilbury: I won't pursue it.

Q. (By Mr. Tilbury) Did you at any subsequent time after concluding the 1956 have occasion to discuss the matter with Howard Cuyler or with any representative of Standard as to the price they charged the Signal Oil and Gas with the price you [357] were charged. We want to get in effect what the prices were.

The Court: I would take it this would go right to the meat of it. Well, of course, the prices charged are in the exhibits offered in the contract and of the amendments of the contract, those are the prices. Then he may also go into any dealings had with the officers of the company concerning this thing. I take it that is what he is getting into.

Mr. MacLaury: My motion is denied?

The Court: Rephrase the question.

Q. (By Mr. Tilbury) Mr. Perkins, did you have any subsequent discussions after the signing of the 1956 agreement with Mr. Howard Cuyler, the general sales manager with regard to prices charged Signal Oil and Gas Company as against the prices charged you? A. Yes, sir.

Q. Would you tell the time, place and circumstances?

A. I will give you the place. The place was in Standard Oil's office in Los Angeles—in San Francisco. It is as close as I can pinpoint it. It was in December of '50, of '56. I just can't pinpoint it. We wrote a letter and asked [358] them for a—

A. (Continuing) We wrote a letter and asked for an audience by them, and I believe it was in the last of '56, the last of '56.

Q. What was that? A. We went down there and we had a long discussion with Mr. Johnsen and we talked to Mr. Cuyler. He came in on the deal for a while; and then he took us to Mr. Vesper's office; and we told Mr. Vesper that we wanted to renegotiate our contract.

Mr. MacLaury: At this point I am going to interpose my objection to the substance of these conversations.

The Court: It will be overruled.

A. (Continuing) We wanted to renegotiate our contracts because I told him what we wanted. We wanted the same price as to Signal and we wanted the subsidies like they were paying the Signal stations.

Q. (By Mr. Tilbury) By "the Signal stations" now you are referring to which? [359] A. Signal Oil Company.

Q. A division of Standard? A. A division of Standard.

Q. All right. And what was the outcome of this discussion? A. First, they told us they did not have any subsidies, and Mr. Vesper—

Mr. MacLaury: I object to that. I object to the "they", and I would like to have it specified so that we can make our objections on the authority, Your Honor.

The Court: Yes, we have gotten into an area where it will be helpful to the jury if the witness will recount the substance of the conversations and designate the speakers.

A. (Continuing) Well, all of our remarks in that meeting were directed to Mr. Vesper, and he did the talking for the Standard Oil. He stated that they were not at that time—he said they had to give some subsidies, but they was discontinuing it, and they was not going to give any more subsidies to anybody. He said that our price was identically the same as Signal Gas and Oil. I remember one remark that I made which probably should not have made, but I will tell it.

Mr. MacLaury: Well,—

A. (Continuing) I said, Mr. Vesper.

Mr. MacLaury: Just a moment, Mr. Perkins. I will object to any further conversation between this witness [360] and Mr. Vesper unless—

The Court: He was asked to repeat the conversation. He may do so. You may answer.

A. (Continuing) I said, "Mr. Vesper, you either know that you are giving Signal a better price than you are giving us, or you don't know very much about the operation of your business."

Mr. MacLaury: I move to strike that. The question is as to whether or not some officers or some other person in Standard knew what the situation was or what they told this gentlemen the prices were has nothing to do with this law suit. The important matter is what were the prices paid and what were the prices offered. This doesn't go, Your Honor, to negotiations of the contract.

The Court: I don't want to analyse the effect of the evidence and the testimony. I think that is for the jury. I will not comment, and your objection will be overruled. Go ahead, Mr. Perkins.

Q. (By Mr. Tilbury) I think you can continue.

A. (Continuing) Well, this argument lasted all afternoon for a couple of hours, and we just finally gave up and come home.

Q. "We" is— A. When I say, "we", I mean Mr. Harris, Mr. Powell, and Allen Perkins and myself, the four of us.

[361] Q. By this time, which Mr. Harris do you have reference to? A. I am talking now about Mr. Gerry Harris, who was the son of Robert Harris who had taken over his part of the business.

Q. All right. Now, following this discussion with Mr. Vesper—

Mr. Hilliard: Your Honor, for a point of clarification, do I understand that this is a conversation that occurred in December of 1956 and the comparison of price for Signal Oil and Gas Company; the witness used the term "Signal" when he attributed this comparison, and I assume he was talking about Signal Oil and Gas. May I have that point clarified?

The Court: Can you answer Mr. Hilliard's query?

The Witness: The price of gasoline?

The Court: No. No, he is asking for the identity.

The Witness: Yes, I am making the identity. There are two identities to make, Your Honor.

The Court: Yes.

The Witness: The price of gasoline was with the Signal Oil and Gas, the subsidy was with Signal Oil.

Mr. Hilliard: The time was December of '57?

The Witness: Well, as near as I can remember. I could be off. It was after the '56 contract was signed, quite a bit. I think the letter is in the file to show the day we went down there.

[362] Mr. Hilliard: Let me just ask one more question: Was it sometime in the last part of 1956?

The Witness: Well, I testified that I thought it was in December. Well, I could be off on that, but there's records in there to show when we went down.

Q. (By Mr. Tilbury) Did you have any subsequent discussions other than these you have enumerated with any of the Standard officials with respect to the price being charged

Signal Oil and Gas as against the price being charged you?

A. Mr. Hilliard, that was sort of a bone of contention until the time that I left the Standard Oil Company with all of the officials of the Standard Oil Company, Mr. Johnsen, Mr. Burns and the rest of them.

Q. Were there any instances in which any of the Standard officials compared your price with the price of Signal Oil and Gas? A. I just recited that they did. They said our price was identically the same.

Q. All right. And were there any statements by any of the Standard officials at any subsequent time in which they stated that your price was either higher or lower than with the Signal Oil and Gas price? A. Not that I can recall just now.

Q. With respect to these subsidies of the Signal Oil [363] Company stations, were there discussions besides those you enumerated with respect to these with the Standard Oil officials? A. I can't remember all the conversations we had over subsidies. We tried awfully hard to get subsidies for our stations. We wanted the Signal Oil stations, the Signal Oil Company subsidies to our stations.

Q. Did any of the Standard officials admit that there was a subsidy program to the Signal Oil stations? A. They denied it for some time and then finally Mr. Beaton of this office admitted they were giving it.

Q. Who is Mr. Beaton? A. Mr. Beaton was the retail sales manager for the Portland area.

Mr. MacLaury: May we have specifically who denied this, Your Honor, instead of the word "they".

The Court: Mr. Beaton.

Q. (By Mr. Tilbury) Would you identify him? A. Mr. Beaton.

Q. Yes. A. Mr. Beaton was the retail sales manager of the Portland area.

Mr. Tilbury: I think Mr. Beaton was identified as the person who stated that such subsidies were given. I am



interested in the group of people that you designated as [364] "they", who denies it.

Mr. Hilliard: Your Honor, without response to that, we move to strike that reference to "who denies", and what existed as too indefinite and uncertain.

The Court: Yes. The witness is being asked at this stage instead of waiting until later to identify to the jury possibly who he means by "they".

The Witness: Well, I meant the Standard Oil officials. Now, if you want to know of some particular conversation, I would identify any particular one. The conversation that I had in Los Angeles—In San Francisco, I had the conversation with Mr. Johnsen; then we had the conversation with Mr. Vesper, who is the executive vice-president, and then we later had further conversations with Mr. Johnsen; and I called them. It is just the two there. Maybe I shouldn't have—

The Court: That is all right. That explains what we wanted.

Q. (By Mr. Tilbury) The gentlemen that you have now identified for us, did they first deny there was any subsidy at all? A. Mr. Johnsen first denied there was a subsidy of any kind that he knew of. Mr. Vesper said that they had given in some rare instances some subsidies, but they were going to be discontinued because it was very bad for the business and they was not going to get into a deal of subsidies.

[365] Q. Did they later either have these gentlemen or any of the gentlemen you have mentioned deviate from this statement to you with regard to subsidies? A. They never did deviate from it.

Mr. Hilliard: Your Honor, well, once again for the record, we move to strike the statements of the witness. The question here is whether somebody received a subsidy and whether he did not or any issue on it at all. It is not what somebody said about it on a given time and place. We move to strike it.

The Court: It will be overruled. It will be denied.

Q. (By Mr. Tilbury) Mr. Perkins, what is a subsidy exactly? A. A subsidy is when the price goes down, when the retail price drops down below or close to the tank wagon price or the price which the service station is buying gasoline for, and he no longer can from an economical standpoint can afford to operate, then the oil company guarantees him a certain margin which we call subsidizing or a subsidy.

Q. What is a tank wagon price? A. The tank wagon price is a price that has long been established as a criteria in the oil business as a price which the oil company posts. I know the Standard always posted it of which they would sell a service station or any legitimate commercial account in quantities of 400 gallons or more.

Q. How do you distinguish that from the retail price? [366] A. That price is lower than the retail price, about five cents.

Q. Well, does this vary from time to time? A. Well, it could vary. If the tank wagons stayed up and the retail price went down, then it would vary.

[367] Q. (By Mr. Tilbury) Were there times, Mr. Perkins, when this five cent differential between the tank wagon and the retail price would be something more or less than that figure? A. There were times during the period between '55 and '58 that the retail price was less than the posted tank wagon price.

Mr. Hilliard: Your Honor, on testimony on this, could we have the specification of the time and place, because it is going to vary considerably, as indicated.

The Court: Mr. Tilbury will develop that.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Can you give us some illustration where that was true where the tank wagon price and retail price were close together, if not identical? A. I can't tell you the exact time of days or months. It happened in

Roseburg in 1950—'56. It happened in Centralia [368] in '56, it happened in Albany and Corvallis territory in '56.

Mr. Hilliard: Your Honor, the witness has said "it happened", and I am not sure the question asked for specification—

The Court: It is bearing directly to the situation that he testified to as when the retail price was lower than the tank wagon.

Mr. Hilliard: Retail price lower than the tank wagon. That is what I—

The Court: That is correct.

The Witness: I would like to correct my statement. I'd say as low or lower.

Q. (By Mr. Tilbury) Now, under what circumstances did this take place? A. Well, the circumstances would be that the retail price would just continue to go down and the tank wagon price would be continuously—remain stationary.

Q. All right. Now, during the claim period, that is, '55 through '58, did the tank wagon price go down, the Standard Oil tank wagon price? A. I don't remember of it ever going down.

Q. All right. But the retail price did vary, I take it? A. It continued to go down.

Q. Now—

Mr. Hilliard: May we have a specification of where and [369] when on the "continued to go down", Your Honor?

The Court: Yes.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Can you specify it? A. Well, I would specify it here at home, because I was very familiar with it here in Portland. It started—

Mr. Hilliard: Excuse me, Your Honor. As to Portland retail, we would object to that, because this witness did not operate at retail—Mr. Perkins did not operate at retail in Portland.

The Court: It will be denied.

The Witness: In Portland in the fall of '56, the retail price dropped just almost overnight or within a week, or within a few days I'm going to say. I can't tell you the exact time. It dropped down in the neighborhood of four cents or almost—very close to the tank wagon price.

Q. (By Mr. Tilbury) When did this happen? A. That happened in the late fall of '56 when the Regal opened their first station at 39th.

Mr. Hilliard: Now, Your Honor, I object to this and any purported connection between a drop in the retail price and some specific station. That is not properly used as a point of time reference, and there is implication beyond that, and I think it is irrelevant and I think it is incompetent and I think it is prejudicial to try to make that contention.

[370] The Court: It will be overruled.

Q. (By Mr. Tilbury) Were you referring to the Regal station at 39th and someplace? You didn't identify it. A. 39th and Powell.

Q. All right. When did that open? A. That opened in the fall of '56.

Q. Was this the first Regal station in Portland? A. To my knowledge, it was.

Q. All right. There have been other Regal stations that have been opened subsequent to that time? A. Yes, sir.

Q. Do you know where the other stations might have been? A. They have one out on 122nd, they have one over here on—on Interstate, they have one here on Broadway and Weidler—

• • • • •

Mr. Tilbury: That is what I was going to ask.

Q. (By Mr. Tilbury) Now, the one on 39th and Powell, you identified in the fall of '56? [371] A. That's right.

Q. Now, can you recall the next Regal station that opened in Portland? A. The next one that I noticed that opened in Portland was at Broadway and Weidler.

Q. All right. Where is that with reference to— A. Right on the Broadway Bridge.

Q. That would be on the Northeast side of Portland? A. Yes, right on our way home to Vancouver.

Q. What was the period of time between the opening of that station and the one on 39th and Powell? A. Well, I think one opened soon after the other one. I can't tell you how soon, but shortly afterwards.

Q. Then was there a third one which opened? A. Well, there were two more that opened. The next one that opened, or one—I don't know if it was the next one or not, but it was at 122nd Street.

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[377] Q. (By Mr. Tilbury) Mr. Perkins, over the years in your discussions with any of the Standard officials did any of them bring up the subject of Regal, if you would identify the time and place for us? A. Yes, they did.

Q. Will you tell us when and where? A. With my meeting, when I was to dinner with Mr. Johnsen and Mr. Hargens, they discussed Regal. In fact, that is the first time that I knew that Standard was furnishing the gas for Regal and they stated—

Mr. MacLaury: (Interposing) I object to that and move to strike the last remark. It was nonresponsive.

The Court: Members of the jury, disregard the witness' statement to the effect that was the first time he knew that Standard was supplying Regal; unresponsive and a conclusion in the sense of the word, that he knew. It is stricken from, the words, that is the first time he heard of such a thing.

Q. (By Mr. Tilbury) When and where did this discussion take place? A. Where did it take place?

Q. Yes, sir. A. In a restaurant down on the peninsula south of San Francisco.

Q. Is this the same one you related to us earlier? A. Yes, sir.



[378] Q. Now, what was said by either of these—well, let's take Mr. Johnsen. What was said by Mr. Johnsen at that discussion? A. Well, Mr. Johnsen and Mr. Hargens were arguing and Mr. Johnsen—

Mr. MacLaury: (Interposing) Just a moment, please. I object to the question. It calls for the same testimony that was given just before the recess and the same objections were made and will be made to this, and they have been ruled upon.

The Court: This, I don't believe he testified to the entire conversation. I think we are going to another phase. I will have to wait and see. At the moment it will be overruled.

Q. (By Mr. Tilbury) Don't relate anything you have gone over before. I am asking if anything came up about Regal specifically by Mr. Johnsen. A. Well, Mr. Johnsen said to Mr. Hargens, he said, "You can control this because you are selling the Signal Oil & Gas and they furnish, and they own Regal or furnish the gas for Regal," and Hargens said, "Yes, I know it, but" he said, "I can't control it."

Mr. Hilliard: We move to strike that testimony, Your Honor.

The Court: Overruled.

[379] Mr. Hilliard: Particularly in the case of ownership.

Q. (By Mr. Tilbury) Did you have any subsequent conversations with Mr. Cuyler with respect to the comparative price between your price and the price of Signal Oil & Gas Company? A. Yes.

Mr. Hilliard: This has already been covered; the price between him and Signal Oil & Gas has already been allowed over objection.

Q. (By Mr. Tilbury) I am not asking you to repeat anything you said before, Mr. Perkins. I am asking, if there were any other discussions at any other time, other than you have related to us with Mr. Cuyler, the General Sales Manager? A. In '57 I had a discussion with Mr. Cuyler.

Q. And where did this discussion take place? A. And the discussion took place in his office.

Q. Can you pinpoint the date? A. It was in the spring of '57.

Q. What was said? A. And he told me definitely they were getting a better price than we got.

Q. Who was this? A. Mr. Cuyler. And Mr. Cuyler said, "Why don't you go talk to Darwin Godfrey because he knows and should tell you all about it."

[380] Q. Now who was getting the better price? Did he identify who? A. Signal Oil & Gas was getting a better price than the Champion boys, which I was one of them.

Q. Did he specifically say Signal Oil & Gas? A. He did.

[381] (Whereupon counsel, Mr. Tilbury, read the questions on the deposition of Mr. Allen Lee Shepard and Mr. Bruce Hall read the answers, having taken the witness stand.)

#### "Direct Examination

By Mr. Tilbury:

[382] "Q. Would you state your name, please? A. Full name: Allen Lee Shepard.

Q. And your address, Mr. Shepard? A. 4609 Wortser Avenue, Sherman Oaks, California.

Q. And your occupation? A. My title in the marketing department is manager, subsidiary operations, at the present time.

[383] "How long have you been in that position? A. In the marketing department six years; with the present title probably a year and a half to two.

Q. Prior to that time what did you do? A. Prior to the marketing experience?

Q. Yes, sir. A. Accounting.

Q. From what period of time? A. Oh, from 1936 to '56.

Q. Did you from time to time have occasion to encounter records pertaining to dealings between Standard and Signal Oil & Gas Company? A. Yes, I did.

Q. Over what period of time? A. Oh, probably a ten-year period.

Q. And in what way would you get into these? A. I would say that my connection with the accounting operations, which involved transactions between Signal Oil & Gas Company and Standard, would be relative to invoices from them, bills of lading from Standard covering deliveries which in turn would back up the invoices, supervision of reconciliation of the accounts, things of that nature.

[385] "Q. Specifically what do you mean by that? A. Specifically, we were buying in various localities, and therefore our prices varied. We have to segregate the purchases by gallons purchased in the various areas, compute our cost of sales based on the prices charged in those areas.

Q. From what areas were products drawn from Standard? A. During this period we were buying most of our products from Standard from their refineries here in Southern California, Montebello and El Segundo. In the northern area we were lifting products from Standard at Richmond, and later on in this period we were—

Q. Is that Richmond Beach, Washington? A. No, this was Richmond, California.

Q. I see. A. We were also taking products from Standard at Richmond Beach, Washington. And later on in this period we were taking products from their terminal at Willbridge, Oregon.

Q. Do you know what periods you were drawing from Willbridge, Oregon, or Richmond Beach, Washington? A. I would say Willbridge started, oh, in the middle of 1956; and liftings from Richmond Beach, Washington would probably go back to the beginning of this period.

Q. And by that you mean '55? A. '55.

[386] "Q. What sort of products were you drawing from those locations? A. Gasoline, of course, in two grades, house brands and premium.

Q. How about lubricating oils, anything of that kind? A. I can't recall that we were buying any lubricating oils from Standard during this period.

Q. Heating oils, anything of that sort? A. No. Signal Oil & Gas Company as such I don't believe ever lifted any heavy oils from Standard terminals.

Q. Were there any products of any sort with the exception of regular and ethyl gas that you obtained from Standard? A. I honestly can't remember any other products. If we did lift anything, it was such a minor quantity that it escapes my memory.

. . . . .  
[398] "Q. And during this time were you obtaining regular and ethyl gasoline from any source? From, let's say, '55 through the latter part of '57, did you obtain any ethyl or regular gas from any source other than the Standard Oil Company? A. Yes, I believe we were buying from other companies in late '57, or early '58.

Q. To what extent, and what percentages were obtained from Standard and what percentage from outside sources roughly?"

Mr. Hilliard: We had an objection, Your Honor, and you permitted the witness to answer.

Mr. Tilbury: Go ahead.

(The reading of the testimony was resumed, as follows:)

"A. Well, this is just an estimate. In the latter part of '57, early part of '58, we could have purchased as much as twenty percent from other companies.

Q. During the earlier time, did you obtain virtually all products from Standard Oil of this type, that is, regular and ethyl gas? A. Yes, we did.

[399] "Q. Now,"—

Mr. Tilbury: Let's see. (Pause) All right, I will skip down to line 13 since there was the ruling there.

"Q. How about the Regal stations in Oregon? How did they obtain their products? A. The Regal stations in Oregon were supplied through our subsidiary, Western Hyway.

Q. How long has Western Hyway been a subsidiary of Signal Oil and Gas Company? A. I can recall the date very well, because I was up there at the time we opened it. It was July 1, 1950.

Q. When did you begin to sell to Regal? A. In this again, I will just have to rely on memory, but I believe it was in the middle of the year 1956.

Q. Would you have some records that would show when the initial sales were made to Regal?"

Mr. Hilliard: I pointed out: "By whom, Counsel?"

Mr. Tilbury: Then I said—pardon.

Mr. Hilliard: "By whom, Signal or Western Hyway?"

Mr. Tilbury: And I said in response: "I would have to include them both, I" guess. "A. Well, this I mentioned, the sales to Regal in California were direct sales from Signal Oil and Gas Company. The sales in Oregon were sales through Western Hyway, and those records would have to be developed [400] "through Western Hyway's invoices.

Q. Their headquarters are in Sacramento, are they? A. That's right.

Q. Who has charge of Western Hyway? Who is their chief executive officer? A. Their chief executive officer would be W. H. Nichell.

Q. Western Hyway is a wholly owned subsidiary, is that correct? A. At what time?

Q. Well, let's take from 1950 on, or whatever the period is. A. No, we had a sixty percent interest in Western Hyway at the inception.

Q. And when was the inception? 1950, is that the date? [401] "A. July 1, 1950.



Q. And subsequently has that been increased? A. Yes. We purchased the additional 40%—I'm trying to remember the date. Well, it has been within the last two years.

Q. Does your company have an interest in Regal Petroleum Company? A. Yes, we do.

Q. Is that approximately 75%? A. Yes, it is.

Q. And how long has Signal Oil and Gas owned 75% interest in Regal Petroleum Company?

[402] "A. I'm confusing Regal with Craig. Regal was considerably later than that, say more like 1954."

Q. Was the acquisition 75% initially, or was it something less than that or something more than that? A. As I recall, we initially—no, we purchased 75% at the outset.

Q. How about Regal stations as distinguished from Regal Petroleum Company? Is this also a subsidiary or an affiliated company of Signal Oil and Gas?"

Mr. Hilliard: Mr. Ottosen says: "Is that Regal Stations, Inc., did you say?"

Mr. Tilbury: "I think it is."

Mr. Hilliard: "All right."

Mr. Hall: "Regal Stations, Inc., is a separate subsidiary and has no direct relationship other than affiliation to Regal Petroleum Co."

[403] "Q. When you say subsidiary, you mean subsidiary of Signal Oil and Gas Company, is that correct? A. Yes, it is.

Q. And is that interest about 60%? A. It was 60% during this period.

Q. By "this period", you mean what dates, sir? A. Between '54 and '58.

Q. Do you know when Signal Oil and Gas acquired a 60% ownership interest in Regal stations? A. I can't recall exactly. I would say approximately 1954."

[404] Q. Was there a third company, at least at one time, bearing the name Regal in some way, Mr. Shepard, Regal Oil Company of Sacramento, or some such title? A. I believe that there were other corporations prior to the actual forming of Regal Stations, Inc., in which we transferred—

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 "Q. Was that about 60% interest again? A. There again, I can't be positive, but I would think, yes.

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 [405] Mr. Hall: "21-A is responsive to the question as to the checking of the date of the acquisition of the interest in Regal of Sacramento. Responsive to this question, we have checked available records and find that Signal had a 60% in Regal Petroleum Corp., of Sacramento, which company was in existence only a comparatively short time. In late 1956, that corporation was in effect merged into Regal Stations, Inc., by a share-for-share exchange of stock."

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 [406] "Q. Now, the sales that were made in Oregon by Signal Oil and Gas Company, were they made directly to Western Hyway Oil Company in all situations, or were they made to Regal Petroleum or one of these other companies? A. To the best of my knowledge, all the sales were made in Oregon were through Western Hyway Oil Company.

Q. Western Hyway in turn resold the products to Regal, did they? A. In Northern Oregon, yes.

Q. How about Southern Oregon? A. They were sold to stations operating under the name of Fortune.

Q. Now, who owned the Fortune stations? Was this a branch of Regal, or is it something else? A. No, these were not part of Regal. They were individually owned.

Q. Did Western Hyway sell directly to Fortune? A. Yes, they did.

Q. There was no intermediary in between? [407] "A. No.

Q. Were all the Fortune stations individually owned, or did the Signal Oil and Gas or Western Hyway or Regal have any interest in any of these stations? A. To the best of my knowledge, they had no interest in any of the Fortune stations.

. . . . .  
[408] "Q. I don't mean to imply something that is not true. All I am asking is to somehow distinguish the type of operation that Regal Petroleum did from the type of operation that Regal Stations did and Regal Petroleum Corporation of Sacramento. Did they occupy different types of operations, or were they in the same type, or what was the actual situation? A. I think their operations were very similar.

Q. In what respects? A. In that they marketed through company-operated Regal stations.

Q. Is there a difference in the area that they occupied? A. Yes.

Q. In what respect? A. Regal Petroleum Company operated stations in the East [409] "Bay area, in San Jose, in the Peninsula area.

Q. These are parts of California, I assume? A. Pardon me?

Q. They are in California that you mentioned? A. Yes, all in California. Whereas Regal Stations, Inc. operated in the Sacramento-San Joaquin Valley area, and San Francisco area.

Q. How about Regal Petroleum Corporation of Sacramento? A. My memory is very hazy on Regal of Sacramento. This, as I recall, was a corporation that was in existence prior to Regal Stations, Inc. Thereagain, I would have to check the legal record to see the actual movement from one corporation to the other.

Q. Has that company disappeared as a separate company? Has it been absorbed? A. Yes.

Q. Consolidated in some way? A. Yes.

Q. And with which company is it now consolidated? A. Regal Stations, Inc.

Q. So at the present time you just have the two corporations in existence, Regal Petroleum and Regal Stations, Inc.? A. Operating in California.

Q. Are there others? A. Regal Stations Co., operating in Oregon.

[410] "Q. I see. Now, that is a different one from Regal Stations, Inc.? A. Yes.

Q. All right, let me ask you about that one. Now, what degree of ownership does Signal Oil and Gas have in Regal Stations Co.? A. At what time?

Q. Well, at various times."

Mr. Hall: "During this period I would think that Regal Stations, Inc. owned a 60% interest in Regal Stations Co."

"Q. This is an affiliate company then of Regal Stations, [411] "Incorporated; correct? A. A subsidiary.

Q. A subsidiary? Regal Stations Company is a subsidiary, 60% subsidiary, of Regal Stations, Inc.; right? A. Right.

Q. Now, has this been true throughout, or has the percentages varied? A. To the best of my knowledge the 60% interest held during this period we are discussing.

Q. Now, is this the company that is also operating in Washington? A. No, it is not. Well, I will qualify that. We have one station in Washington.

Q. Longview? A. Yes.

Q. And under which name is that operated? A. Regal Stations Co.

[412] "Q. All right. Transferred or sold. I don't want to mislead anyone. I am just trying to get the picture clear here. To Regal Stations Inc., and Regal Stations, Inc., in turn transferred or sold it in some fashion to Regal Stations Company; is this correct? A. No.

Q. All right, would you explain it. A. The sale was made from Signal Oil and Gas Company to Western Hyway, who in turn sold it to Regal Stations Co.

Q. They did not go through Regal Stations, Inc.? A. No.

Q. Is Regal Stations Co. a corporation? A. Yes.

Q. Was there an actual sale from Western Hyway to Regal Stations Co.? A. Yes.

Q. In the case of products that ultimately found their way into Regal Stations Co., as they existed in Oregon, were [413] "these products obtained initially from some point in the State of Oregon? A. Yes.

[414] Mr. Tilbury: "I was asking whether Western Hyway obtained its products directly from Signal Oil and Gas or whether it obtained them from some other source."

[415] "A. During this period I would say that Western Hyway bought most of their products from Signal Oil & Gas.

Q. There were some exceptions then, I take it? A. Yes.

Q. From which other companies would Western Highway have acquired products?"

Mr. Hilliard: We had an objection on hearsay. Well, ~~strike that.~~

Mr. Hall: Shall I go ahead, Mr. Hilliard?

Mr. Hilliard: Yes.

"A. This again would only be hearsay on my part, because I can't remember and don't have direct knowledge of their purchases, but there were other independent companies that supplied them quantity supplies.

Q. When you say most,—how much is most? Would it be ninety per cent. for example, that it drew from Signal Oil & Gas Company? A. There again, it varied with the years. In the early part of this period I would say they bought most of it, practically all of it, from Signal Oil & Gas Company. In the latter part—I would hazard a guess as to the ratio.



Q. Would it be more than half? A. On a guess I would say approximately a half.

Q. Can you tell me which independent oil companies you had reference to, or some of them? [416] "A. This could be verified by checking Western Hyway's records, but I believe they did buy some products from Hancock and some products from Caminol.

Q. Does Signal Oil & Gas have any ownership interest in Caminol? A. No. At least not to my knowledge.

Q. Were the products which Signal Oil & Gas obtained, which ultimately found their way into the Regal stations, drawn from Standard Oil of California? A. Inasmuch as Western Hyway supplied some Regal stations with products during the latter part of this period, some of the products came from other companies.

Q. Well, my question was, those products which came through the chain from Western Hyway, Western Hyway in turn acquired from Signal Oil & Gas Company, and which ultimately found their way into Regal stations, were such products of that nature that were supplied from; initially let's say, Signal Oil & Gas, in turn obtained by Signal Oil & Gas from Standard Oil Company of California? A. Yes.

Q. Was that a one hundred per cent acquisition, or did Signal Oil & Gas in Oregon and Washington, we'll say, obtain products from any other source?

Mr. Hilliard: Mr. Ottoson, do you understand the question?

[417] "A. Yes. There again, we are talking about periods. I would say most of the products during this period were obtained from Standard Oil Company. However, in the latter part of the period it is possible we did lift some other products, some products from other companies, into Oregon.

Q. Which companies? A. I believe it was Union Oil Company.

Q. Pardon? A. Union Oil Company.

Q. And when would that have started? A. I would say in the early part of '58.

Q. So at least from '55 to '57 is it a fair statement that in both Oregon and Washington Signal Oil & Gas obtained its ethyl and regular gas exclusively from Standard Oil Company of California? A. Give or take a little on the date, I would say yes.

Q. How would you qualify the date? A. It's possible we might have purchased some products from Union in the latter part of '57.

Q. Would it be fairly small as compared with the volume [418] "that you drew from Standard?"

The Witness: Yes.

Q. Does Signal Oil & Gas own the Regal stations themselves, that is, the land, the property, the station, the physical assets, directly, or is this owned by Regal Stations Co.? A. There may be one or two units that Signal owns directly but I would say that ninety-five per cent of them are owned by the corporation.

Q. And which corporations? A. By the various corporations.

Q. The Regal Stations Company and the other Regal stations? A. Yes.

Q. Now, are the employees who man these stations company employees of any of the corporations? A. Yes, they are company employees.

[419] "Q. And which company would pay their salary? Would it be Regal Stations Co. in the case of stations in Oregon? A. That is right.

Q. Do any of them pay for their products on the consignment basis or do they operate on a commission type arrangement, or is it strictly a salary basis? A. During this period it was all strictly salary.

[451]

**Clifford Leslie Curry**

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

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Mr. Hall: That is page 1224.

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**Direct Examination**

**By Mr. Hall:**

Q. Mr. Curry, where do you live? A. 1334 Northeast 77th, Portland.

Q. How long have you lived in Portland? A. I have lived in Portland since 1947.

Q. What is your occupation? A. I am a service station proprietor.

Q. And how long have you been one? A. Since the year 1947.

Q. For what company? A. I was with Standard Oil in 1947, '48, and to July of '49 with Mobil subsequently.

Q. All of the time? During the claim period here, which I will define as '55 to '57, you were a Mobil dealer here, is that correct? A. No, during this period that this testimony covered I was a Chevron dealer.

Q. You were a Chevron dealer, all right.

[452] Where was your location, your station location in '55 to '57? A. I was on the corner of Southeast 92nd and Powell Boulevard.

Mr. Hall: I am wondering if we can take Plaintiff's Exhibit No. 252 and have the witness show where he was.

(Whereupon the bailiff brought the map forward and placed it on the easel.)

Q. (By Mr. Hall) Mr. Curry, could you take this red pencil and mark where you were? Incidentally, Mr. Curry, you looked at this map earlier this morning to identify

your location? A. Yes, I did. Right here. (Indicating)

Q. Will you mark "D-2" on there again. A. (Indicating)

Q. Thank you very much.

(Whereupon the witness resumed the witness chair.)

Q. During this period when you were a Chevron dealer, referring to 1955 to 1957, were you the recipient of any sort of a subsidy plan? A. Yes, I was.

[453]. (By Mr. Hall) Did you receive such a subsidy plan or did you receive one? A. Yes, I did.

Q. Did it have any name? A. Yes, it was called the Chicago Plan.

Q. And was that in effect during the period that you were a Chevron dealer? A. Yes, it was.

Q. Would you explain how this plan worked, to the jury? A. Yes, on each drop in the retail market of one cent the dealer was supported in his loss of margin, the oil company absorbed seventy-five per cent of the loss, and the dealer absorbed twenty-five per cent of the loss.

Q. How far down were you supported in price on that loss? A. We were told that the base could run down to as low as four and a half cents, I believe.

Q. I see. Do you have any records with you with regard to this period of time? [454] A. Yes, I do.

Q. Where are they? A. Right here.

Q. Do those have any identification mark on them? A. Yes, I have my day book that we maintained on a day-to-day basis and I have the invoices for the gasoline purchased, and I also have a mimeographed form that was given to us by Standard Oil, that is entitled "Dealer Transmittal Letter Temporary Retail Price Allowance."

Q. Does that show the giving of such a subsidy? A. Yes, it does.

Q. I see. By the way, Mr. Curry, is there any mark on those papers, such as Plaintiff's 107, a court marking? A. No, they have not been so identified. There is no marking on them.

Q. There is no marking on those?

Mr. Hall: May we ask that they be marked as Plaintiff's Exhibit 107.

[459] Q. Now, Mr. Curry, with regard to the Regal Service Stations, were there any in your general area in Portland during the claim period of which I have referred; that would be 1955 to 1957? A. Yes, we had a Regal station on the corner of Southeast 39th and Powell that was constructed and operated during the time I was a Chevron dealer at 92nd and Powell.

Q. Did this Regal station handle the same customers, clientele that you did? A. Well, the flow of traffic up Powell Boulevard [460] naturally had to pass that station before it arrived at my station.

[462] Q. (By Mr. Hall) Did you say you were a Chevron dealer in 1957, through '57, this period we are talking about? A. I started to be a Chevron dealer June 14th of 1957.

Q. June 14th of 1957; do you know the prices at the Regal Station at 39th and Powell? A. Well, they were advertising their commodities for two cents less than I was selling mine.

[463] Q. Now, besides the two cents less, were they giving anything else away; that is not a very good way of putting it. Was there anything else offered besides the two cent inducement? A. Oh, they advertised they had service station stamps to go with it.

Q. All right. Do you know yourself how this service stamp program worked? A. Yes.

Q. How? A. From experience. You buy the gasoline there, why, they give you a stamp the same as S&H green stamps are given to you on the same percentage basis. They have got a stamp for every dime's worth of gasoline you bought.

[464] Q. (By Mr. Hall) Would you advise us as to what factors were involved in the decrease of your business



which you testified? A. I think it could be best illustrated in this way.

Q. I don't want to interrupt you, but just specifically answer the question for me? A. Well, I would have to tell you exactly how many gallons I was pumping and what—

The Court: That is what you should tell.

A. (Continuing) When I took the station over in June, it was pumping 8,000 gallons per month. We increased that gallonage to a peak of August of '57 to 15,000 gallons per month; and in the fall of '57 this is when all the prices started coming up and people recognized the depressed market and our gallonage fell and it stayed down and it never came back up.

[467] Q. You mentioned these price signs, I believe, at the Regal Stations. Will you describe those price signs? A. Well, they are large signs, about six feet high and about three feet wide, and they have a large numeral on them advertising the price of their lowest grade gasoline.

Q. I see. These figures, I assume then, can be changed from day to day? A. Yes.

#### Cross-Examination

[470] By Mr. Hilliard:

Q. I understand you had some price signs then that came [471] out in the fall of '58? Is that what—or fall of '57 did you say? A. Yes.

Q. When was that, the fall of '57? A. Price signs started—they began to use them universally in the industry in the fall of '57. In fact, the numerals were furnished by Standard Oil.

Q. By "in the industry", you mean Richfield, Shell, yourself— A. The oil companies furnished them.

Q. However, you came in in June of '57; is that right? A. That's right.

Q. And your station hit its peak gallonage, as I understand it, in August of '58; is that right? A. That's right. I believe it's August.

Q. And when I say "peak", I mean your highest point of gallonage. A. Yes, yes.

. . . . .

[472] Recross-Examination

By Mr. Hilliard:

Q. You started, as I understood your testimony, 8,000 gallons per month, and when you did peak, it was at a monthly gallonage of 14,000? A. 14 or 15. It's up in there.

. . . . .

[473] George Carney DeFord

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Mr. Hall: 1260, Your Honor and counsel.

Direct Examination

By Mr. Hall:

Q. Where do you live, Mr. DeFord? A. I live at 10700 S. W. 42nd Avenue, Portland 19.

Q. What is your occupation? A. I'm a service station operator.

Q. What was your occupation during the period of 1955 to 1957? A. Service station operator.

Q. For what company? A. Standard of California.

Q. Were you a Chevron dealer for them, or were you a regular employee? A. Chevron dealer.

Q. Chevron dealer. Now, where was your station location in this period of 1955 to 1957? A. 9025 S. W. Barbur Boulevard.

. . . . .

[474] Q. Was there any subsidy program affecting your station during this claim period of 1955 to 1957? A. Yes.

Mr. Hilliard: May we have the same objection, Your Honor, as to the other witnesses.

The Court: I apologize to counsel. My attention was diverted.

Mr. Hilliard: It goes into the area of subsidy to his operation, which we would say is irrelevant and immaterial on the same basis as before.

The Court: It would be the same. It will be overruled.

Q. Would you describe the details of this program that you had. A. Well, it was called—in the trade it was known as the Chicago Plan. When the margin to the dealer dropped below the six cents margin above tank wagon, the Standard Oil Company took 75% of the loss below that point.

[475] Q. Was there any floor to your share of the loss? A. As I recall, it was four and a half cents was the floor.

Q. I see. Beyond that then, the company would take the entire loss? A. True.

Q. Do you recall whether you actually received assistance during this period of time under the subsidy program? A. Yes, I did.

Q. Do you have any records here with you? A. No, I don't.

Q. When would this subsidy program go into effect? A. At any time that the price of gasoline dropped below a dealer margin of six cents gross.

Q. I see. May I ask you this: Were there any so-called price wars during the period of time from 1955 through '57 that you recall? A. Were there price wars?

Q. Yes. A. Yes.

Q. Do you recall, from your own observations, any changes in the customer's buying habits when these price wars would occur?

[477] A. Any time there was a price disturbance, there were certain classes of customers that you didn't see in the station any more, and as the situation became more pronounced, then there were increasingly other classes of customers that you didn't see any more until the situation cleared itself up.

Q. (By Mr. Hall) Now, what is the difference between major and minor on brands? A. Well, the major oil companies are nationwide organizations, nationwide advertising, nationwide credit cards, and the minors are more localized outfits that encompass smaller areas.

Q. Do you recall applying this test—any difference between majors and minors in 1955? A. Well, in the industry it was more or less an understood thing there was a two cents differential between majors and minors.

Q. Standard Oil Company of California considered a major brand? A. Oh, yes.

Q. Did you receive any other allowances from Standard Oil Company of California besides the subsidy program that you [478] have described? A. Besides the gasoline supports?

Q. Other supports, yes. A. Yes.

Q. What were they? A. We received maintenance and restroom allowance of a fourth of a cent a gallon, which was used for station maintenance, restroom allowance, janitorial supplies, such as that. The station, we received a cooperative advertising allowance of one-tenth of a cent a gallon up to fifty per cent of our advertising bill.

Q. I see. Who painted your stations? A. Standard Oil Company.

[482] Redirect Examination

By Mr. Hall:

Q. Counsel has mentioned to you lower prices going back as far even as 1954, depressed price periods. Can you compare the severity of these depressed price periods from 1954 on to the most recent time you testified to? A. Since I have been there, the price depressions in this area commenced about the time I went into business and have progressively gotten worse up to right now.

Recross-Examination

By Mr. Hilliard:

Q. You started in 1953 at this location? [483] A. Yes.

Q. And your remembrance, would you know who started the depressed prices in 1953 or '54 in your area? A. The Shell Station next door to me posted a price sign and took a two cent drop the night before I opened up for business.

Q. So you opened in the face of a two cent drop? A. Yes, sir.

Q. All right. And, as you say, there has been some progression since 1953 in the severity of price disturbance? A. The length of each price disturbance, the depth of it, each succeeding one seems to be a little more severe.

• • • • •

[484] Charles Arthur VanLandingham

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hall:

Q. Where do you live, Mr. VanLandingham? A. 2530 North Portland Boulevard.

Q. And during the claim period that you have heard us referring to in the courtroom, that is, 1955 to 1957, did you operate a service station? A. Yes, I did.

Q. Where was that located? A. 4616 North Interstate.

Q. For what company? A. Shell Oil Company.

• • • • •

[486] Q. All right. What, incidentally, is tank wagon price? Define that for us, briefly. A. Well, there is no such thing as tank wagon price. It can be one price one day and change in twenty-four hours.

Q. Well, I appreciate that the price level itself will change, but what is it? A. Normally it should be about six cents below your retail price.

Q. It is the price which you purchase then below your retail price? A. True.

Q. From your supplier? A. Yes.

Q. Thank you. Mr. VanLandingham, with reference to Regal Stations, do you recall when the first Regal Station



came into the Portland area? A. I don't recall the year that they came in, but they came in in this period we are speaking of, from '55 to '57.

Q. I might ask you how close to you was the nearest Regal? A. During this period?

Q. Yes. A. The closest one to me, I believe, was Broadway and [487] Wheeler, approximately two miles.

[488] Q. Do you know when the first one came in and where? A. The first came in on 39th and Powell.

Q. Pardon me. A. I believe this came in in approximately '55 or '56.

Q. All right. Now, were there price wars in early '55? A. Very small ones. We did have a price war then, yes. The length of time was very short.

[489] Were there price wars in '56? A. Yes.

Q. Now, you have testified we have a period of time on this 39th and Powell station, you said; what was the time you think they came in? A. '55 or early '56.

Q. All right.

Q. (By Mr. Hall) Will you compare the price wars that you have described in '55 through '56? A. They extended much longer.

Q. By "they", which ones do you mean? A. The price wars.

Q. I see. Now, you are referring—I didn't get that clear; let me say, "they" you are referring to the '56 price wars which extended longer or the '55? A. The '56-'57 price wars extended longer than the ones preceding that. Of course they were.

[491] Q. (By Mr. Hall) All right, did you observe of your own knowledge any other, any new factors or added factors in the '56 price wars from those of the 1955 price wars? A. Would you state that again for me?

Q. Yes. Did you observe any, any new practices in the industry in connection with the 1956 price wars which were

absent in the 1955 wars? A. We went through a period about that time regarding the price signs. At one time we were told that this had to be put on the pump, very small due to a city ordinance. This, I understand went into court and it was ruled that they couldn't, could put up large price signs which we have.

Mr. Hilliard: Well, Your Honor—

The Court: He is explaining a factor as he understands it. He may continue.

A. (Continuing) - At this time we got into the big signs that you see today. Now, we have them made out of metal because we know they are going to last. We made them out of paper before.

Q. When you say "time" in reference of time, can you pinpoint that time for us? A. Yes, this comes within this period very well that the big signs came out as we see them today.

Mr. Hilliard: When we say "this period," Your Honor, [492] may we have a little more specification?

The Witness: '57 and '55, sir.

Q. (By Mr. Hall) Where did these signs which you have described originally, these numbered price signs come from? A. We received them from the company.

Q. Did any other companies use these signs? A. Yes, they did.

Q. Do you know who started this practice of using the signs?

Mr. Hilliard: We object, Your Honor, being able to say an area besides the court where some particular individual started using the sign.

The Court: Well, we will assume the witness has to tell us of his own personal observation.

A. (Continuing) Yes, we started these big signs as we know of them today.

Q. Yes. A. Well, I wouldn't want to answer that because I never made a study to see who was the first one to put it on the streets.

Q. (By Mr. Hall) Did Regal have this type of sign? A. Yes, they did.

Q. Did you observe the Regal stations that you have just described to us, 39th and Powell and Broadway and Wheeler (Weidler) during this period of time? [493] A. I would say I observed them. I went by to see their operation many times, yes. This was a new type of operation of a size new to the City of Portland.

Q. What was new about it? A. Well, here we had completely no service work. This is strictly a retail outlet for the price of gasoline. When I refer to service work, I am speaking of maintenance, repair and tire work. They had their stamps which was redeemable. You redeemed them at the station. They had premiums which was redeemable by these stamps. Actually, it was a new type of operation as far as a service station was concerned here in Portland. It was strictly a gas and nothing else performed there.

Q. Did you observe their advertising programs? A. Yes.

Q. Will you describe them? A. I could stand to be corrected. I'm not sure of this. Around their stations I think they have a sign similar to what we would refer to or recognize as the Foster Kleiser signs here in Portland, completely around the stations here. They advertised. They also advertised they had a major brand gasoline. I could stand to be corrected, but I think there was a car involved at one time.

[494] Q. I see. Do you recall in 1955 what the spread was between major and minor brands? A. In '55?

Q. Yes. A. Two cents.

Q. (By Mr. Hall) Can you recall the difference between [495] the Regal prices and your prices at retail when they opened up? A. Yes, they opened below us.

Q. How much below, do you recall? A. Two cents.

Q. Did you have a clientele from the Vancouver, Washington area at your station? A. Yes, I did.

Q. Did you observe—did it fluctuate at any time?

A. The whole station would vary. To say that a certain amount of Vancouver people varied, this would be hard to say. I could give you approximately the amount of Vancouver business that I have, though.

[496] Q. What was that, approximately? A. It would run 50 per cent or better.

[497] Cross-Examination

By Mr. Hilliard:

Q. Would you glance through that, if you would like, Mr. VanLandingham.

The Court: It will be received.

(Whereupon Defendant's Exhibit 1612-A, Portland [498] City Ordinance No. 103987, was received in evidence.)

(Witness examines)

Q. (By Mr. Hilliard) Have you had a chance to look through it? A. Yes, I have.

Q. This is the City Ordinance, I assume, to which you refer? A. Yes.

Mr. Hilliard: Your Honor, I would like to read a portion of this to the jury.

The Court: You may.

Mr. Hilliard: This is Exhibit 1612-A, Ordinance No. 103987, and captioned: "An Ordinance Amending Article 6, Detailed Sign Regulations, of Ordinance Number 76571, Sign Code, by Adding Thereto Section 15-625 and 15-626 Regulating Signs Applicable to the Selling of Gasoline for Use in Motor Vehicles.

"The City of Portland does ordain as follows: Section 1. The council finds that there exists a practice among those individuals and corporations merchandising gasoline products for the use in motor vehicles of erecting movable signs and placing them at various locations on the premises and adjacent to sidewalk areas; the council further finds

that the quality of such signs and the placement thereof has been distracting to drivers of motor vehicles and subject to poor quality and [499] workmanship and misrepresentation in the eye-catching appeal; the Council further finds that it is desirable to regulate and place certain limitations upon erection and maintenance of such signs; now, therefore, Article 6, Detailed Sign Regulations, of Ordinance No. 76571, the Sign Code, is hereby amended by adding thereto two sections to be numbered, entitled, and to read as follows:" And then the actual section on the signs. This was passed by the Council on May 24, 1956, Mayor of the City of Portland and the Auditor of the city.

Q. (By Mr. Hilliard) Then you referred to the problem of price signs and the City Ordinance having been passed, and this is the one that was passed at that time? A. Yes.

[500] Q. Yes. Just let me, so you will know what I am talking about, turn to page 1281: "Have there been instances, to your own knowledge, in your own business when the retail price had approached or would be very close to the tank wagon level?" Answer: "Up to '58 you said?" Question: "From 1955 to 1958." Answer: "1958. I would say in 1958 it crowded pretty close. It is progressively worse. It has been in the preceding years from that." So is that the proper statement of your— A. In '50—to clarify this up as much as I can, I was in business in '53. In '53, to give you a comparison, we might have had three months out of the year, the price war two months. Say the same thing progressed in '54, '55, '56, '57. We would now be going into the area of where we're living with this a majority of the time rather than a minority of the time.



[504]

Charles Franklin Andrews

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

[505] Direct Examination

By Mr. Hall:

Q. Where do you live, Mr. Andrews? A. 6406 Northeast 8th Avenue.

Q. What is your occupation? A. Service station manager.

Q. What company is that that you work for? A. Texaco.

Q. All right now, during this claim period you heard us talking about, 1955 to 1957, did you operate a station then?

A. Yes, I did.

Q. Whereabouts was that? A. North Interstate and Lombard.

Q. Was that also a Texaco at that time? A. Yes.

[506] Q. All right. Now, did you observe this Regal Station at 39th and Powell when it first came in? A. Yes.

Q. Could you advise us what you observed about it?

First of all, let me take it in chronology and pinpoint it a bit. How did their price level compare with yours?

Mr. Hilliard: At what point, Your Honor? May we have a specification of time in any comparison of price?

Q. (By Mr. Hall) When did you say this 39th and Powell opened up? A. It was in the fall of '56.

Q. Okay. A. If my memory is right.

Q. All right. A. You want to know what they were doing? When they [507] opened up, they were about two cents under the major stations.

Q. All right. What else did you observe about those Regal Stations and their operations compared to yours?

A. It was a new type of operation.

Q. In what way? A. Strictly gas stations, and used premiums to entice business.

Q. What kind of premiums did they use? A. They had their own stamp and they redeemed them at the stations, just about anything you wanted. They had grass seed and water buckets and stepladders and garbage cans.

Q. Relating strictly to gasoline sales, did you observe their signs? A. Yes, they had billboard signs.

Q. Do you recall what was on those signs? A. They advertised major brand gasoline. And, "We honor all major oil company credit cards."

[510] Q. (By Mr. Hall) Yes, I think you said when they first opened up that they were two cents below your price. A. Yes.

Q. During this claim period and after they opened up, of course, did it ever drop below two cents below your price? A. Why, yes, but we went right down with them. We stayed within two cents of them.

[511] Q. Did you follow them or did you go identically at the same time? A. They moved first and we followed.

Q. All right. Prior to Regal coming in, did anyone put up large signs, that you recall? A. Yes.

Q. All right. Do you recall the major-minor price differential in 1955, the spread? A. Two cents.

Q. Were there any price wars in 1955? A. Yes.

Q. Were there any price wars in 1956? A. Yes.

Q. Were there any price wars in 1957? A. Yes.

Q. Were there any differences between these price wars in these years? A. They were small wars.

Q. In which, in all years? A. They would last a very short time. The dealers could straighten them out in their own areas.

Q. Was this during all of the period of time? A. Yes, until Regal moved in and then we have been in a price war ever since.

Q. What was your answer? [512] A. I said until Regal moved in, at that period; it seems like that since that period I can't recall of any period that the prices

went back to the normal dealer margin that we had prior to Regal. It has been a depressed condition ever since.

[515]

**Robert Paul Baunach**

called as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

**Direct Examination**

**By Mr. Hall:**

Q. State your full name, sir? A. Robert Paul Baunach?

Q. Where do you live, Mr. Baunach? A. 1701 Northeast 152nd Place.

Q. All right, and during this same period we are referring to in court, 1955 through 1957, did you operate a service station? A. Yes, I did. Approximately April of '55 I took over a station at 39th and Sandy, a Chevron.

Q. A Chevron station, you said? A. Chevron station.

Q. Would you come down to the board here and use D-3 to locate your station for us? A. Approximately here (so marked).

Q. All right. Thank you. By the way, will you please while you are here put in the location of the nearest Regal station during that period of time, '55 to '57? [516] A. One opened first on 39th and Powell. One opened on Broadway and Weidler.

Q. Put X's there. A. (So marked)

Q. Did you have any subsidy program during that period of time? A. Yes, I had what is know as "the Chicago plan." The oil companies supported us 75 per cent of the loss.

Mr. MacLaury: What is your next question?

Q. (By Mr. Hall) Will you describe the economic plan for us?

Mr. MacLaury: If you will wait just a moment, please. Your Honor, the defendant objects to any testimony on the retail level on the grounds that it has no proper part in this case.

**The Court: Overruled.**

**Q. (By Mr. Hall)** Go ahead and describe your plan?

**A.** The oil companies supported us 75 per cent of our loss.

**Q.** Was there any floor on your last loss? **A.** Four and a half cents a gallon.

**Q.** And by that is meant the oil company took the entire loss below that point? **A.** That is correct.

**Q.** Did you receive the benefits of that plan at any time [517] during '55 and '57? **A.** For quite a while, yes.

**Q.** Now, I don't know if you testified as to this; when did this first Regal station that you marked on the map come in at 39th and Powell?

• • • • •  
**A.** Regal started the big blast in '56 on their price signs, give aways, premiums, new stamps. Being new stations, naturally everyone was concerned. Naturally it affected my business.

**Q.** Did you say Regal stations?

**Mr. Hilliard:** I move to strike the conclusions and answers as nonresponsive to the question.

**The Court:** The witness's conclusion to the effect that naturally it affected my business is his conclusion about it and is stricken from the record. Disregard.

**Q. (By Mr. Hall)** What was the regular price when this 39th and Powell station opened in comparison to yours?

**A.** They were generally two cents a gallon under us and [518] generally on Friday evenings they would come out with a lower price, large price signs, which we do not get support until Monday or Tuesday of the next week.

**Q.** Now, you say that they were two cents below and they would come out with these price signs on Friday evening; clarify this? **A.** They would come out even below the two cents.

**Q.** All right. That is what I was trying to find out. So, they were more than two cents below Friday evenings? **A.** That's correct, yes.

**Q.** How far did they drop below you? **A.** Generally a penny at a time. It would be three cents.



Q. I see. Now, in 1955 what was the normal spread between major and minor? A. Two cents.

Q. With regard to their signs, their gasoline advertising signs only, do you recall those signs from your personal observation? A. Yes, I do.

Q. What did they say? A. Would you rephrase that?

Q. Yes, with regard 'only now' to gasoline advertising signs— A. Yes.

Q. —What do they say? [519] A. A. Main brand gasolines in large numerals on big signs.

#### Cross-Examination

By Mr. Hilliard:

[522] Q. Well, then, why—what is your purpose in suggesting here that the price signs didn't come until Regal did? A. Regal had big new stations, and they had large signs. It was a new type of merchandising gasoline in the Portland area.

Q. Well— A. Which I noticed much more than any other smaller stations that were displaying large signs.

Q. Now, nevertheless, you are now, knowing of this ordinance and the date of it, know that price signs were of a sufficient problem, and that is the large sign prior to May of 1956 to result in the passage of a city ordinance as you know of that fact? A. Yes, I did.

[524] Your Honor, at this time perhaps we could finish the reading of the Signal Oil & Gas officer.

The Court: You may proceed with that. That was Mr. Shepard's deposition?

Mr. Hall: Yes, Your Honor.

[529] \* \* \* "In the case of the Point Wells acquisition by Signal Oil and Gas from Standard, where did the products go during the period in question?

[530] A. Signal Oil and Gas Company has three customers in that area.



Q. Who are they? A. Harris Petroleum Company.

Q. Is that B. F. Harris? A. Yes, Rainier Oil and Gas Company and Friend Distributing Company.

Q. Did Signal Oil and Gas have any degree of ownership in any of those companies? A. None at all.

Q. Did they continue to be supplied by Signal Oil and Gas during the period in question? A. To the best of my knowledge, yes.

[535] Q. Now, how were sales made by Signal Oil and Gas Company to the B. F. Harris Petroleum Company? On what basis? Did they have a written contract, for example? A. No, we did not.

[536] "Q. Was it just on a spot order type basis, or how was it— A. The marketing department developed a rack price at the Terminal, and deliveries were made on that basis.

Q. Would you define what is meant by a 'rack price'? A. I would say a rack price would mean the price charged to a distributor by a supplier at f.o.b. the Terminal.

Q. In the State of Washington did Signal Oil and Gas Company maintain some sort of bulk terminal facilities of its own? A. No, we did not.

Q. So, in the case of sales that were made by Signal Oil and Gas to B. F. Harris, would the mechanics have been, let's say in Washington, from the Richmond Beach point, it was then acquired via common carrier or something, or by Harris themselves, directly from that point rather than passing through some storage facility of Signal Oil and Gas Company? A. That's true.

Q. And would this also be true of Rainier and Friend Distributing Company? A. That's true.

Q. Did you maintain any storage terminals or facilities in the State of Oregon? A. No.

[537] A. This would only be a quoted price by Signal Oil and Gas Company to a customer, f.o.b. that point.

Q. Did you sell to Harris, Rainier, and Friend at the rack price? Was that the criterion? A. Yes. At no time was it delivered.

Q. They were responsible for picking it up from, in this case, from Standard's terminal? A. That's right.

Q. And paying their own transportation charges and the like. Did you give them any kind of advertising allowance, or rebates, or anything of that sort, or would it be whatever the rack price was that would control? A. That's true.

[538] "Q. The latter, right? A. That's right. No allowance—I mean, no advertising, no consideration.

Q. And in the case of all three companies there was no written contract, but it was an oral understanding? A. Right.

Q. And did that continue from the year, let's say, 1955 to 1958 on the same basis? A. To the best of my knowledge, yes.

• • • • •  
[541] "Q. Would you have records that would show the rack price during this period in question? A. Our invoices would show the price to our distributor.

• • • • •  
"Q. Getting back to this Harris, Rainier, and Friend at the moment, could you give me some sort of relationship, in cents or however other way you can describe it, between the amount that Signal Oil and Gas paid Standard for the products and the amount that you resold it to Harris, Rainier, and Friend for? Can that be related in terms of cents, or is there any way that one can go from one to the other? A. Well, I think our records would probably disclose the billing prices we made to these customers, and this could be compared with our cost from Standard.

Q. That would be the only way? A. Yes.

• • • • •  
[544] Q. Were there any sales which your company made in Oregon or Washington directed to consumer accounts? A. None that I know of.

Q. In other words, all of the products that you obtained were ultimately sold either to Western Highway, or the Regal chain, or the three distributors that you have mentioned? A. That is true."

Mr. Hilliard: Mr. Ottoson states, "May I add, and see if the witness agrees, as to the States of Washington and Oregon solely."

Mr. Hall: "Yes, I assumed that this included just the States of Oregon and Washington."

[549] The Court: Cross examination?

Mr. Hilliard: Yes, I asked a few questions of Mr. Shepard in the deposition.

Q. One additional point also, Mr. Shepard. In connection with the ownership of properties, I didn't understand whether then during the period involved you indicated Signal Oil and Gas actually owned any Regal properties in Oregon. A. No, there was no ownership of any Regal property in Oregon by Signal Oil and Gas Company during any of this period.

[553]

**Ray Williams**

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

#### **Direct Examination**

**By Mr. Bonyhadi:**

Q. Mr. Williams, where do you live? [554] A. Centralia, Washington.

Q. And would you tell us were you in the gas business in '55 through '57? A. Yes.

Q. What was your position in that business in '55 through '57? A. I was a commercial distributor for the Signal Oil Company.

Q. Is that the Signal Oil Company, a division of Standard of California? A. Yes.

Q. And where were you located in those years? A. Centralia, Lewis County.

Q. In the State of Washington? A. Yes.

Q. Do you still do business with the Signal Oil Division of Standard? A. Yes.

[555] Q. All right. Well, let me rephrase it to satisfy everyone. Do you recall whether in the years 1955 and 1956 from time to time the posted retail price of gasoline in the area in which you acted as distributor for Signal Oil Company division of Standard Oil of California, the defendant here, came close to or fell below the tank wagon [556] price? A. At different intervals it was on both sides of the tank wagon.

Q. In other words, your answer is from time to time it did go close or fall below the tank wagon price? A. Yes, it went above also.

Q. At that time, what was your discount or commission off tank wagon price from Signal Oil Company per gallon? A. Do you mean my contract?

Q. Right. A. Or do you mean what was my—

Q. Well, I mean what was the discount off of tank wagon price; what was the margin to which you were entitled from Signal Oil Company off tank wagon price; was it one cent, two cents, five cents, three and a half cents, what was it during that period of time? A. My, my contract read one way was—

Q. All right, go ahead, answer your own way. A. During the price situation of course it was a different view. My contract was three and a quarter off tank wagon.

Q. Three and a quarter off tank wagon. Now, during 1955 and 1956 and '57, was it always three and a quarter or do you know whether it could have been more at times. A. Sometime, I don't know just when, I got another quarter of a cent which remained three and a half. I don't [557] know when it was.

Q. It was three and a quarter? A. I don't know whether it was during that time. It was just during the 1957 time or '56.

Q. It was three and a quarter; it might have been three and a half sometime during the period? A. That's right.

Q. Now, during the year 1955 and 1956, did you receive any subsidy from Signal Oil Company, division of Standard Oil Company? A. During the price condition, I—

Q. Right. A. Received help, yes.

Q. Now, from time to time, how much was that help in tenths of cents per gallon, if you recall? A. It ranged, oh, from a cent for one short period of time to seven and a half.

Q. It ranged from a cent, is that your testimony from one cent to seven and a half cents per gallon; is that depending on the market conditions at the time? A. Yes.

[558] Q. But you did receive these subsidies during 1955 and 1956? A. At different intervals, yes.

Q. During those two years. Did you confirm that also at the time you found you did get no subsidies during '57? A. Yes.

Q. Do you recall during this '55-'57 period whether in your area of operation there were any Champion stations that sold Champion brand of gas? A. Yes, there was.

Q. Now, you mentioned that you did get subsidies from [559] time to time during 1955 and '56. Was that by reason of price disturbances in your area? A. Yes.

[561] Cross Examination

By Mr. MacLaury:

[562] Q. (By Mr. MacLaury) Now, Mr. Williams, I direct your attention to exhibit 1453-X-1. That is the one dated March 29, 1955, relating to Station No. 431-2. Is that before you? A. Yes.

Q. What is that document, Mr. Williams? A. It's a request for a temporary price adjustment.



Q. And the request is directed to who? A. Mr. A. C. Berg.

Q. Who is Mr. A. C. Berg? A. He's in the home office of Signal Oil Company.

Q. I see. And it is signed by A. D. Burnham? A. Yes, sir.

Q. And Mr. Burnham is connected with the Signal Oil Company? A. At that time, yes.

Q. Where did Mr. Burnham obtain the information, if you know, that is shown on Exhibit 1453-X-1? A. I really don't recall. It's possible that I supplied the information.

Q. Was it your function and custom to supply information to Mr. Burnham regarding the pricing situation in the Centralia area during the 1955-56 period? A. I did.

[563] Q. Now, look at 1453-X-2. A. Would that be the second page?

Q. That is the second page. I don't believe yours are yet marked -2. That refers to Station 431-2. Was that a station which you supplied? A. Yes, sir.

Q. And it was located at 1002 S. Gold Street, Centralia? A. That's right.

[564] Q. (By Mr. MacLaury) Now, is it your testimony then that the third page, dated September 29, 1955, shows the correct amount of assistance extended to the dealer in Station 431-2 during the week September 19, 1955? A. I'm not positive, but I think its three and a half cents, I think I added a cent to that out of my—

Q. Well, I am talking about the amount extended by the Signal Oil Company? A. Oh, yes. This is it, right.

Q. And with respect to the amount of assistance shown on 1453-X-4 for the week October 28, 1955, would your testimony be the same, that that shows the amount of assistance extended to your dealer in Station 431-2 for that period? A. To the best of my knowledge, yes.

Q. Would your testimony be the same with respect to 1453-X-5? A. Yes.

[565] Q. (By Mr. MacLaury) Turning your attention to the next page, dash 6. A. Would that be November 30th?

Q. Dated November 30th, 1955. A. (Witness nods head.)

Q. And may the record show the witness is nodding his head. 1453X-7, dated September 19th, 1956, does that show the correct amount of assistance extended to the same dealer? A. To the best of my knowledge, all of these are.

Q. And dash 8, dated September 21, '56, does that show the amount of assistance extended by Signal Oil Company to your dealer in Station 431-2? A. Yes.

[566] Q. (By Mr. MacLaury) Mr. Williams, with respect to the dealer in Station 431-2, did you pass on to the dealer any subsidy or price assistance as shown in 1453X to the dealer? A. Yes.

[568] Q. (By Mr. MacLaury) Now, Mr. Williams, would you direct your attention to Exhibit 1453Z, and they are page 1 through 6, and I will ask you with respect to the first page, are you familiar with Station No. 431-6? A. Yes, sir.

Q. Is that a station in Centralia? A. That is right.

Q. And is it a station which you have leased to a dealer? A. Yes.

Q. And is it a station which through the years, 1955, 1956, and 1957, you supplied? A. Yes, sir.

Q. And is that a station to which you have transferred during this period, this particular time, certain price assistance forwarded to you by Signal Oil Company? A. Yes.

Q. Now, turning your attention directly to page 1 or 1453Z-1, which is dated August 24th, 1953, does that document correctly reflect the amount of price assistance extended to your dealer during the week August 24th of '55? A. Yes.

Q. And would your testimony be the same with respect to page 2, dated October 28th, '55? [569] A. Yes.

Q. Would your testimony be the same with respect to the week of October 28th, 1955, as the date that is shown on page 3 of Exhibit 1453Z? A. Yes.

Q. And would your testimony be the same with respect to page 4 in regard to the week November 30th, 1955, and with respect to the assistance figures shown on page 4? A. Yes.

Q. Would your testimony be the same with respect to 5, does that show the correct amount of assistance extended to your dealer during the week September 19th, 1956? A. Yes.

Q. And 1453Z-6, does that correctly show the assistance, price assistance extended to your dealer for the week September 21, 1956? A. Yes.

[570] Redirect Examination

By Mr. Bonyhadi:

[572] Q. Did the subsidy have anything to do with the three and a quarter cents discount you testified you received—it might have been three and a half cents, sometime during that period; did it have anything to do with three and a quarter cent discount that you received from Signal Oil Company, Division of Standard Oil, off the tank wagon price? A. No.

[573] Earl D. Vonada

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn, to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. Bonyhadi:

Q. Mr. Vonada, where do you live? A. Centralia, Washington.

Q. Could you tell the jury and the court what you did during the years of 1955 through 1957? A. I owned and operated a Shell service station.

Q. Whereabouts? A. On Highway 99 across from the Champion Fleet Service.

Q. Is that outside of Centralia? A. That is outside the city limits, yes.

Q. Was it across the street from a Champion? A. Champion Fleet Service.

Q. That was a gas station? A. Yes.

Q. Could you tell us whether during the years of 1955, '56, and '57 whether during those years you bought gasoline from time to time from suppliers or distributors other than Shell? A. Yes.

[576] Q. (By Mr. Bonyhadi) Mr. Vonada, did you buy any gasoline during the years 1955, '56, and '57 from Signal Oil Company, division of Standard? A. Yes, I did.

Q. Was the price charged to you for this Signal Oil Company product less than that charged by Shell at the same [577] time in '55, '56, or '57?

Mr. Hilliard: This is the point of my objection, Your Honor. That is the price he can buy gasoline from Shell compared to a price he can buy it from Signal Oil Company.

The Court: It depends on the price and for what purpose he bought it.

Mr. Hilliard: That's right.

Q. (By Mr. Bonyhadi) Now, do you recall, Mr. Vonada, those times at which you obtained gasoline from Signal Oil Company, did you post a price sign at those times? A. Why, yes, I did.

[578] Q. (By Mr. Bonyhadi) Did you post a price sign when you obtained gas from Signal Oil? A. Yes, that is the reason I bought it there because I could buy it a little cheaper than I did from Shell.

Mr. Hilliard: I move that, Your Honor, be stricken as incompetent. It has no bearing on any issue in this case. That is just exactly what your Honor's ruling was a moment before.

The Court: Yes, and the testimony stops right there. It means nothing to us members of the jury. But, if it continues on and the price that he had to pay the Shell,

it would be tied in with the amount that was paid by Perkins, then it becomes relevant; but until then, it doesn't.

Q. (By Mr. Bonyhadi) You testified your station was across from a Champion station, was that right? A. Yes, that was my competition, my main competition.

Q. At those times which you testified to, the price now, did you sell it at a lower price per gallon than the Champion station across the street? A. That was my idea of buying it somewhere else so that I could.

Q. So the answer was "yes," you were selling it? A. Yes.

Q. Do you recall whether you took some business away [579] from the Champion station in those times? A. Well, there is no question about it.

Mr. Hilliard: Excuse me, Your Honor. I object, Your Honor. The time and the place.

The Court: Well, he just was asking if you recalled an event. He may or may not recall it. If he recalls it, he may tell us about it. If he tells us about it, then you may make your objection.

Q. (By Mr. Bonyhadi) I am not sure you answered this question. I asked did you recall the times at which you posted a price sign that you did take business away from the Champion station across the street; do you recall that during '55 or '57—

Mr. Hilliard: I object, Your Honor. It is a conclusion of the witness and it goes for incompetent testimony.

The Court: Members of the jury, it has been objected to, and I have to deal with it. The question assumes that he took some business away. That is an assumption which destroys him after the question. He meant this witness may be interrogated. If he had any customers, tell us who they were then we can find out if he knows whether or not they would be or would have been a customer of the other side. That is the impact that is raised by, when a question assumes something rather than asking a direct question. So, I have to deal with it. The objection will be sustained.



[580] Q. (By Mr. Bonyhadi) During the period of 1955, '56, '57, Mr. Vonada, are all those items which you had a price sign at this station, did you have some customers that you could identify as having previously been customers of the Champion?

A. Well, I have been there twenty-two years, and a lot of people I don't know. I don't know their names. I know when I see them in their car. I know when they go across the street and when they come over here to me, and that is what I say, I did get some business from him at a lower price.

[583] Cross-Examination

By Mr. Hilliard:

Q. Is it true that in the years we are talking about at your location, you paid probably one cent a gallon more for your gasoline from Shell than did the Shell dealers downtown in Centralia? A. Those were key stations down there, and they—

Q. Well, would you just answer— [584] A. They were selling gas a cent a gallon cheaper than I was.

Q. Were they buying at a cent a gallon cheaper than you were? A. Well, that I couldn't say for sure.

Q. Well, that is your thought or impression, isn't it? That is what you believe, isn't it? A. Well, evidently, yes. Of course, they would own stations, and they would reimburse them in certain respects, such as on their light bills, if they kept open twenty-four hours, why, they would pay their light bill on them in order to keep them going.

Q. And you followed a market of—practice of meeting any competition, did you not? A. Either that or below.

Q. That was, in other words, your method? A. If I could, yes. If I couldn't, I would try to purchase them somewhere else.

[586]

**Ervin A. Helgeson**

was thereupon produced as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

**Direct Examination**

**By Mr. Bonyhadi:**

Q. Mr. Helgeson, where do you live? A. Centralia, Washington.

Q. How long have you lived there? A. Since 1930.

Q. Could you tell us what you did during the years 1955, '56 and '57? A. I operated R. and H. Champion Fleet Service.

Q. Where was that located? A. One mile north of Centralia.

**[591] Cross-Examination**

**By Mr. Hilliard:**

Q. Thank you. Now, in connection with your business, in May—first of all, let me ask you this, did your volume of petroleum products, that is gasoline, the volume of your gasoline sales hit a peak in the year 1955 in excess of 400,000 gallons, that is 434,568, in that area? A. Yes, sir.

Q. That was '55 was your highest year marketing gasoline? A. That is right.

Q. Now, is it not true that in May of 1956 there was a change in the highway that passed in front of your station at Centralia? A. That is right.

Q. And resulted in what we call the freeway or throughway being completed through that area? A. That is right.

**[593] Q. (By Mr. Hilliard)** Then after the highway changed in 1956, in May, could you tell us what happened in terms of your gallonage in the marketing of gasoline at your station? A. That fall business started declining.

Q. Was this actually heavy or how would you describe the drop in numbers of vehicles passing before your station? A. Well, there was a terrific decrease.

Q. You were still a distributor of Perkins at the time of the sale to Westway, were you not? A. Yes.

[594] Q. The Perkins Oil Company of Washington? A. Yes.

Q. And had you felt the effect of this decline in traffic right up to that time? A. Yes.

• • • • •

[603] Carl F. Leithoff

was thereupon produced as a witness in behalf of the plaintiff; and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Bonyhadi:

Q. Where do you live, Mr. Leithoff? A. In Portland.

Q. And how long have you lived in Portland? A. Since May of 1955.

Q. And what is your occupation? A. Well, I am retired now. My occupation prior to that was sales manager for Westway Petroleum Company.

Q. Is that a subsidiary? A. It is a subsidiary of the Union Oil Company of California.

Q. How long did you work for Union Oil Company or Westway? A. I have worked for Westway since May 16th, 1955, when we first came to Portland for that company.

Q. And before then? A. Before then I was hired by the Union Oil Company in 1931.

Q. What did you do during the years of '55 through '57 [604] with Westway? A. May 16th, '55, until through '57, I was the state manager for the State of Oregon, that marketing area.

Q. Did that marketing area during those three years include only the State of Oregon or part of Washington? A. No, it included Washington as far north as Kelso and Longview.

Q. During those years were you acquainted with the marketing conditions in the gasoline field? A. In it. Yes.

Q. Would you tell us when you came here in '55 at the beginning of this period whether there was a differential in price between majors and minors? A. Yes, there was.

Q. Would you tell us what that difference was?

Mr. MacLaury: We are speaking now of the tank truck level or retail level?

Q. (By Mr. Bonyhadi) From the retail level? A. Yes, the retail price in this marketing area, there was a differential from two cents or more difference between minors and majors.

Q. Could you define what majors and minors are in this field? A. Well, a major oil company is a company that is nationally advertised. A secondary or a minor company [605] could be one that sells rebranded gasoline. It is an independent oil company. It would be an individual that owns a service station or a small oil company.

Q. Do you recall the entry of Regal Stations into this area of Portland?

Mr. MacLaury: Now, just a moment, Your Honor. Your Honor, I will object to the evidence, to any evidence with respect to these Regal Stations on the same grounds as I told the Court this morning before the morning session. I will also object on retail level on the grounds that the plaintiff was not a retail marketing agent in Portland, and on the second ground he was not in a retail market anywhere affected by the Portland market.

The Court: It will be overruled.

Q. (By Mr. Bonyhadi) You may answer the question about the Regal Oil Company.

A. Yes, I remember when they came.

Q. Correct. A. I think it was in, what, October of 1956.

Q. Were there any particular—anything particularly significant that was introduced by Regal to the Portland, Oregon, market? A. I think Regal Oil Company introduced a different method or an outstanding method of marketing in that they built their first station at 39th and Powell and they [606] advertised giving away a Cad, a

new Cadillac, I think, every month with merchandise and some additional gimmicks and displayed a price sign on the curb.

• • • • •

Q. (By Mr. Bonyhadi) Do you recall whether the prices of the Regal Stations at that time when they entered Portland, when the 39th and Powell station opened, do you recall whether they were lower than the price then charged by the Standard stations or Chevron stations in the City of [607] Portland?

• • • • •

The Witness: The Regal stations, they had one station at that time, that is the 39th and Powell, and in that zone they were, yes, lower.

Q. (By Mr. Bonyhadi) Do you recall the magnitude of—how much lower? A. No, specifically I don't recall that.

Q. Do you recall the price disturbance following the entry of the Regal station in Portland and was there one? A. In that zone area, yes, there was.

Q. Can you tell us any result of that price disturbance and what happened as a result of it? A. Well, when they entered the market, they were naturally out to get all the business they could and establish a new station, and they did a good job of it.

• • • • •

[608] Q. (By Mr. Bonyhadi) Under what brand did you sell your gas to the Westway stations? A. Golden Eagle is the brand name.

Q. Did the Regal competition in October, '56, have any effect on your retail price? A. Yes, they did after they were in business for a while.

Q. How? A. Well, we had at that time—at that time I believe we had two service stations marketing in that zone, in that area. So, through our surveys, why, it was necessary to lower our price retailwise and that brought about a situation whereby we lost some business and had to do something to meet competition.

• • • • •



[609] Cross-Examination

By Mr. MacLaury:

[612] Q. And would it be your—is it your testimony that after the Regal station was opened, that there were other major brand stations and some minor brand stations in that zone that met the Regal price? A. They were all affected, yes.

Q. Would it also be your testimony that Westway stations were compelled to move their price down in order to meet the prices of some of these—in competition with some of these other stations? A. That's true.

Q. Now, Mr. Leithoff, I believe you testified in the last trial that it was customary for Westway to sell the Golden Eagle brand at two cents below the prevailing price for the Union Oil Company's own— A. Retail price, that's right.

Q. That is correct. And the Golden Eagle brand gasoline was of the same quality as the regular Union gasoline, was it? A. No, it was not.

Q. The Golden Eagle was an inferior quality— A. That's right.

[627]

**Wilbur R. Thompson**

was called as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

**Direct Examination**

By Mr. Hall:

Your Honor, Mr. Thompson is the witness who was under subpoena yesterday, and there was some confusion as to his arrival time.

The Court: Very well.

Q. Where do you live, Mr. Thompson? A. Roseburg, Oregon.

Q. And how long have you lived in Roseburg? A. Oh, since 1934.

Q. Have you operated a service station at any time there? A. I—I have operated different stations for 24 years.

Q. All right. We have in this lawsuit what we call the claimed period which was 1955 through 1957; referring to that time, did you operate a service station during that time in Roseburg? A. I operated one at Washington and Stevens, Roseburg, Oregon.

Q. What kind of a station was that? A. Signal. Signal Oil and Gas.

Q. Signal Oil and Gas. Now, let me get that straightened [628] up with you because we have two different names that are similar; was this the Signal Oil division of Standard Oil of California? A. They changed to that.

Q. They changed to that? A. They changed to that when it was bought out.

Q. When it was bought out by Standard? A. Yes.

Q. Now, during this period of time that we have been referring to, were there any price disturbances in the Roseburg area?

Q. (By Mr. Hall) During that period of time, were [629] you given any subsidy by the Signal Oil? A. I was.

[630] Q. (By Mr. Hall) What was the largest amount of your subsidy during that period of time? A. I think it was just under seven cents.

[631] Cross Examination

By Mr. Hilliard:

[632] Q. When did you receive the subsidy that you described? A. It was better than two weeks after—after it started. It could have been as much as a month.

Q. Well, now, this is May of 1956 that it started, you said? A. Yes.

[633] Q. Then it would have been by June or sometime in June of 1956 that you received the subsidy. For how long did that continue? A. Well, of course, that subsidy increased as the gas went down in price, and the latest date—if you want the latest date that I can remember, it was just after the turn of the year. It would be in January.

Q. In January of 1957? A. Right.

Q. Then was it constant during that period that you received a subsidy or was it just off and on? A. It was constant once the gas war started.

• • • • •

[644]

**George James Mathis**

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Hall:

Q. Mr. Mathis, where do you live? A. Vancouver, Washington.

Q. And what is your occupation? A. I work for a service station.

• • • • •

Q. What kind of work did you do prior to that time? A. In the logging truck business.

• • • • •

[645] Q. All right. How many trucks did you have? A. One.

Q. Did you use the Champion stations in the Vancouver area? A. I used the Champion station out on Evergreen Highway in Hazelde.

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[646] Q. (By Mr. Hall) When did you commence trading with the Regal stations? A. It was in the—if I remember right, it was in December.

Q. Of '56? A. Yes.

. . . . .

Q. All right. How often did you trade at Regal? A. Every day I filled up.

Q. You filled up there every day? A. Every trip into Portland.

. . . . .

[647] Q. How big are those tanks on your truck? A. Two fifty-gallon tanks.

Q. All right. Now, after you started buying at Regal, to what extent did you trade at the Champion station north of Vancouver you described? A. None.

Q. None? A. None.

Q. What occasioned you to transfer to the Regal stations? A. I liked to get my gas quite a lot cheaper than I could there.

Q. Do you recall how much cheaper? A. Oh, I think I saved about five dollars a fill.

Q. Do you recall any of the advertising at the Regal stations? A. No, I don't. All I was interested in was the price of gas.

. . . . .

#### Cross-Examination

By Mr. Hilliard:

Q. Mr. Mathis, you testified here at the last trial? A. I did, sir.

Q. And at that time, I believe you testified the Regal station at which you traded, Broadway and Weidler, you first observed there in March of 1956, was that your [648] testimony before? A. Oh, I bought gas there in 1956 and before that.

Q. And it was your testimony then that you were positive you bought it at that location from a Regal station in March of '56, is that right? A. I bought gas there in '56.

Q. In March? A. Yes, sir.

Q. And although I suggested to you then and now that you were wrong about that, nevertheless, your testimony was that you were positive you bought gas? A. I bought their gas there.

Q. At that time at the Regal station at that location? A. I don't know if it was a Regal station or not. I said I didn't remember if it was a Regal station, but I bought gas off of that corner.

Q. Oh, I see. What station was it? A. I don't even remember what station it was.

[650] Q. But some unidentified station in March of '56 at [651] Broadway and Weidler would give you how much better price? A. They gave me another cent below the price they had posted.

Q. What was their posted price compared to the Champion stations? A. It was the same as his was, but they gave me another cent and I will tell you, sir, how I found it out. I ran out of gas and had to pull in and fill up. They pulled up and gave me an extra cent off and I started trading there and the new station came in and I kept trading there because it was less, a lot less.

Q. Well, you can't tell me the name of that station you traded at as of March of 1956? A. No, sir.

Q. Whatever it was, it drew you away from the Champion [652] station in Vancouver and you didn't go back there? A. No.

Q. When you say "no," mean yes, that is what happened, it drew you away from the Champion station and you didn't go back there to buy gas, is that right? A. That is right.



## [655] Redirect Examination

By Mr. Hall:

Q. This station that you refer to is this new station that came in at this location; would you clarify that in my mind, was this the Regal station you testified to?

Mr. Hilliard: That is a leading question, Your Honor. Now, this person could not identify the station that was there in March.

The Court: That wasn't the basis of the question. I will leave the question in.

Q. (By Mr. Hall) Will you answer the question? A. Yes, it is a new station. It was a Regal station.

Q. I'm not talking about March when you first started. I am talking about this new station that you referred to? A. Yes.

. . . . .

[656] Q. Now, I believe you testified that when the new station came in you got a much lower price? A. That's right, sir.

Q. Will you compare that much lower price, as you call it, to the one that you were getting at this station in March? A. Well, they offered me them stamps and stuff, which I wasn't interested in. All I was interested in was the price, and they gave me an extra two cents a gallon off of that.

Q. That was an extra two cents off? A. Off of the two cents they had already given.

Q. I see. That made a total of four? A. Yes.

. . . . .

## [657] Recross Examination

By Mr. Hilliard:

Q. You are talking about two cents and two cents; what is the first two cents? A. The first two cents was lower than the Champion stations in Vancouver. The other two cents they asked me if I wanted the stamps or any give-

away stuff, and I said I wasn't interested in that. They gave me two cents more off of my gas and made it four cents.

. . . . .

[678]

**Howard Lester Buller**

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. Hall:**

Q. Where do you live, Mr. Buller? A. Vancouver.

Q. How long have you lived over there? A. Since 1948.

Q. Referring particularly to the years of 1955, '56, and '57, did you live in Vancouver at that time? A. Yes, I resided with my folks.

Q. What was your job situation starting in '55? A. I worked for the S. P. & S. Railway.

Q. Whereabouts? A. In '55 I worked in Vancouver.

. . . . .

[679] Q. Did you buy gasoline from the Champion station in Vancouver in 1955?

. . . . .

The Witness: Yes, I bought there from the time I got my driver's license. That is the only place I can remember that I bought gas.

Q. All right. Do you recall the Regal service stations in Portland? A. Yes, sir.

Q. When did you first notice them? A. One opened up here, oh, I don't know, a couple of blocks east of the Broadway Bridge.

Q. Do you know when that was? A. It was a little while after I came to work over here [680] in Portland.

Q. And you came to work in October of 1956? A. November, somewhere in that area.

Q. All right. Now, did you trade with the Regal stations? A. Yes, I started trading quite a bit with them because they were cheaper.

Q. Cheaper than whom? A. Than Perkins Oil.

Q. Now, do you recall how much cheaper they were? A. Oh, as I recall, about two or three cents, somewhere in that area.

Q. Do you recall anything about their advertising at these Regal stations? A. They said something about major gasolines and oil.

Q. Now, I should ask you something about your gasoline consumption.

How much gasoline did you consume in 1955 on a monthly basis, approximately? A. At the time I was running around one hundred to one hundred and a half a month.

Q. That is in gallonage? A. Dollars.

[681] Cross-Examination

By Mr. Hilliard:

[686] Q. As soon as you went back to Vancouver to work over there, did you start buying your gas at the station where you used to? A. Yes.

Q. You went back to the Champion stations? [687] A. Yes.

Q. You went back to the Champion stations? A. Yes. This is quite a ways out of my road to go clear back over here to buy gas.

[707] Leonard S. Gray

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bonyhadi:

Q. Mr. Gray, can you tell us where you live? A. 5617 Northeast Salmon Creek Street, Vancouver, Washington.

Q. How long have you lived there? A. About 1954 I came to Vancouver.

Q. Now, what is your business, Mr. Gray? A. Well, I am in show business—variety arts.

Q. In connection with your business, do you use quite a bit of gas? A. Yes, I do have a house trailer, chimp truck, and so on and so forth.

Q. Now, do you remember back in '55 and '56 where you bought your gas over in Vancouver? A. Yes, I bought my gas out on Hazedel there at the Champion station, I do believe it was at that time.

[708] Q. Did you buy any gas at Champion after Regal came in? A. Sir?

Q. Did you buy any gasoline at the Champion stations that you spoke about before Regal came in? A. Oh, yes, I traded there considerable.

Q. Did you stop buying—did you start buying at the Regal station after the Regal station came in? A. Did I start buying at the Regal station?

Q. Yes. A. After they came in?

Q. Yes. A. Yes.

[709] Q. How much gasoline did your tank hold? A. We held, oh, about, I believe( around 100 to 115 gallons, something like that.

[710] Q. Do you remember what the difference was between the price you would be paying at the Champion station north of Vancouver and the price you would pay at Regal here in Portland? A. I can't pinpoint the exact price, no, but I do remember that, in kind of figuring it out at home and so on, my books at home, why I saved, oh, anywhere from four to six dollars, something like that, which it would really pay me to come over here to get it. Plus I would pick up a few cigarettes while I was over

here. The trip would probably net me eight or ten bucks, what I would save on this side of the river.

\* \* \* \* \*

[725]

**Albert H. Bunn**

was thereupon called as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

**Direct Examination**

**By Mr. Bonyhadi:**

Q. Mr. Bunn, where do you live? A. Ridgefield, Washington.

Q. And where do you work? A. Vancouver.

Q. Do you work for a gas station? A. I do.

Q. Which company's gas station? A. Texaco.

Q. How long have you worked there? A. A month.

Q. Did you work in another gas station before then? A. I did.

Q. Whose gas station was that? A. Don Fraser, Hazedel.

Q. Now, where did you work during the years of '55 and '57? A. Alcoa, Camas Paper Mill. I was working for a contractor.

\* \* \* \* \*

[728] **Cross-Examination**

**By Mr. Hilliard:**

\* \* \* \* \*

[731] Q. What was the difference in the price at Regal and the price you paid at Champion? [732] A. Two to three cents.

Q. If you weren't trading at a Champion station and then traded at Regal, it would take that much difference to get your business away, I take it? A. Any time I can make two cents a gallon on gas, I will do it.

\* \* \* \* \*



[740]

**David Alling**

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

By Mr. Hall:

Q. Mr. Alling, where do you live? A. 901 Southeast 97th Avenue, Vancouver.

Q. How long have you lived there? A. Approximately four years.

Q. Where did you live between 1955 and 1957? A. Madrona Park, Vancouver. That would be 9401 Northwest 127th Avenue.

Q. What was your business during that period of time? A. Contracting.

Q. Did you trade at the Champion stations at all during that period of time? A. I did.

Q. (By Mr. Hall) Do you recall when you first—did you [741] trade at Regal stations? A. I did, sir.

Q. Do you recall when you started to trade with them? A. 1957.

[742] Q. Do you know how much under the Champion stations the Regal stations were at the time you started trading with Regal? A. I would figure about three cents.

[764] Mr. Bonyhadi: Your Honor, we would like to read part of the deposition of **Mr. Petersen** as it appears in the transcript of the prior proceeding.

“Q. Would you state your name, please? A. T. S. Petersen.

Q. Where do you live, Mr. Petersen? A. 246 West Santa Inez Road, Hillsborough.

[765] "Q. Have you been with Standard since 1922? A. Yes.

Q. You were general sales manager from 1941 to 1942; director and vice president from 1942 to 1948, and president from 1948 until just recently? A. November 1st of '61.

Q. Are you presently on a consulting basis? A. Not very much. I am almost completely divorced from the company now. I would be glad to give them any help that I can, but I am not formally retained as a consultant.

Q. Were you also employed—I guess that is the term—by the California Oil Company? A. You mean did I work for them?

Q. Yes, sir. A. Well, Standard Oil Company has all the subsidiaries working for the parent. Naturally, you have jurisdiction over all of the subsidiaries.

• • • • •

[779] **Donald William Fraser**

was thereupon called as a witness in behalf of the plaintiff, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

#### Direct Examination

By Mr. Tilbury:

Q. Would you state your name for the record, please?  
A. Donald William Fraser.

Q. Where do you live, Mr. Fraser? A. Vancouver, Washington.

Q. How long have you lived in Vancouver? A. Since 1946.

Q. What is the nature of your business? A. Gasoline and oil, the same.

Q. What company are you affiliated or associated with?  
A. I have my own company, the Don Fraser Company.

Q. How long have you been engaged in the petroleum business? A. Since 1946.

Q. And in what capacity or capacities? A. Primarily as a distributor of petroleum products.

\* \* \* \* \*

[786] Q. That is a fair statement? All right. Now, sir, do you recall during the period, if it did happen, from '55 to '58 when the Regal stations came into the Portland area?

Mr. Hilliard: Your Honor, we object to Regal on the same grounds as before.

The Court: I understand. You are making a record. Overruled.

Q. (By Mr. Tilbury) Can you identify the time for us, sir? A. I can't exactly, no. It was I believe in 1956. I can't give you the exact date, no.

Q. Do you recall the time of the year when it occurred? A. I believe it was in the summer, early fall.

Q. All right. You are not certain of the exact time? A. No, I am not.

Q. All right. Did you personally observe the opening of any stations or go by any of these stations shortly after they were opened? A. Yes, I did.

[787] Q. Could you tell us approximately when it was with reference to the opening of these stations? A. I was very interested in the operating, in the Regal operation because it was a new operation in this area. It was new to all of us that had been in the gasoline business and even some of us that were in in a small way because it was startlingly different from anything that we had seen before; a large supermarket type operation.

\* \* \* \* \*

Q. Could you tell us what you personally observed at [788] that time? A. Well, they were doing a great deal of business. It was a beautiful outlet, large signs. The price was a very definite factor. They had a premium program. They had large signs surrounding the back two sides of

the station with I remember very well free Cadillacs; I believe one a month, and a large sign, "Major Brand Gasoline," that they were selling.

. . . . .

[789] Q. And at that time can you tell us what you observed concerning the price at that station? A. The price at that station at that time, if I remember correctly, was approximately three cents, I believe under the major price, and an additional cent under the secondary price; and then in addition, we calculated that there was an additional cent which was devoted to premiums.

. . . . .

[792] Q. Following the opening of the Regal station and the price level as far as the general Vancouver area, did it go up or go down or remain constant? A. We had some price problems prior to Regal coming into the area. But I think Regal was the big bomb shell that really started our broke pricing primarily in the Portland-Vancouver area.

. . . . .

[793] Q. (By Mr. Tilbury) What kind of problems were there prior to Regal that you mentioned? A. We had price skirmishes. There were, there were price problems before Regal came into the picture.

Mr. MacLaury: Can the witness specify what area he is talking about, Portland or Vancouver?

The Court: Yes, you might as well develop that.

The Witness: I thought I stated before that it was both in the Portland-Vancouver area.

Q. (By Mr. Tilbury) All right. What do you mean by "skirmish," if we can pin this down a little bit more? A. Well, they were not so extensive. Price wars might be in an area due to individual operators. I might cover a considerable area but never of the magnitude that I recall that came about after Regal came into the area.

Q. Now, as far as your own relationships, were you buying your products prior to Regal from Mr. Perkins? A. Yes.

Mr., MacLaury: I object to that, Your Honor. The record shows that he was buying from Perkins Oil Company of Washington.

Q. (By Mr. Tilbury) All right. You were being invoiced by Perkins Oil Company of Washington, I believe? [794] A. Yes, sir.

Q. Were they products that were being obtained by Mr. Perkins? A. By Perkins individually from the Standard Oil Company of California.

[797] Q. (By Mr. Tilbury) As far as your dealings with the Perkins Oil Company or with Mr. Clyde Perkins, Mr. Fraser, after Regal entered the Portland market, were there any changes?

Mr. Hilliard: We will object to that question.

The Court: It will be overruled.

The Witness: Mr. Tilbury, I am not just sure from your question in what way you are pertaining. As far as personal relationship, there was no change. As far as the purchasing of products, there was change, because I did purchase products on the outside.

[806] Cross-Examination

By Mr. Hillard:

[823] Q. If I advise you, Mr. Fraser, that your records as to each of those retail outlets shows the relative same margin as to Ethyl and regular through '55, '56, and '57, would you say that then you would rely on whatever your records show as being the accurate representation of margin rather than on some memory that you have? A. I think it should, but I think you should bear in mind that all of those are owned stations.

Q. Who owns those particular stations? A. The first five are owned—I personally owned, and the last Mr. Perkins owned.

Q. Now, on the first five, you had—you owned them and each of them were leased to dealers? A. Yes.



[824] Q. (By Mr. Hilliard) And you leased them, on a rental basis, monthly rental? A. It should have been on a monthly rental. In many cases we had to absorb rent which could have applied in some of these, to these units. I don't know.

Redirect Examination

By Mr. Tilbury:

[830] Q. (By Mr. Tilbury) Mr. Fraser, as applied to the business in general, that is, this particular type of business, that is, the gasoline business in the broad sense, could you give us an opinion, your best opinion, as to what would [831] be required by an ordinarily prudent businessman in this category as a safe margin of profit with which to operate its business during the claim period, that is, from 1955 through 1958, not in this particular business, but in the business as a whole.

[832] The Witness: In order to survive, I think you have to have in our type of operation around three cents.

[875] Dwight C. Logan

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tilbury:

Q. Would you state your name, please? A. Dwight C. Logan.

Q. Where do you live, Mr. Logan? A. I live in the City of Seattle at 7025 19th Avenue Northeast.

Q. How long have you lived in Seattle? A. I have lived in Seattle since January of 1958.

Q. What is your occupation at the present time? A. At the present time I operate a bookkeeping service.

Q. What is the name of the bookkeeping service? [876] A. Dwight C. Logan and Company.

Q. Is this your own company? A. Yes, sir.

Q. What sort of business bookkeeping do you do? A. Principally we handle service station accounts.

Q. Any particular type of service station? A. No, we cover practically all brands that are represented in the market today.

Q. Would you have some Chevron or Standard stations, for example? A. At the present time I do not.

Q. Have you had some in the past? A. No.

Q. Can you give us some indication as to how many service stations you might do the bookkeeping for? A. Basically about thirty.

Q. And prior to your present work—incidentally, how long have you been doing this type of work? A. I have been doing this work now about a year and a half.

Q. Have you had some other experience in the petroleum business with the exception of this? A. Yes, sir.

Q. Could you please tell the jury the nature of this experience as it relates to the petroleum business? [877] A. Well, I was employed by the Union Oil Company in 1934 as a service station attendant in the City of Seattle, and I worked continuously for the Union Oil Company from that period until I entered business for myself.

. . . . .  
[878] In 1955, in May of 1955, I was transferred to the City of Portland and assigned the job of representative, being an all inclusive title, as there were only three of us that came here to organize a new company for the Union Oil Company, a wholly-owned and wholly-operated subsidiary.

We acquired a group of existing service stations and operated as a cut-rate or secondary supplier, and I re-

mained here in the City of Portland through the entire year of 1957.

[879] In 1958, as I testified, I was transferred to the City of Seattle and given the responsibility of state sales manager for the State of Washington for the Western Petroleum, a position that I held until March of 1962, at which time I terminated.

[880] Q. (Continuing) Now, what was the name, Mr. Logan of the secondary supplier or cut-rate dealer that you helped assist in some way that you mentioned? A. What was the name of the company that we replaced?

Q. What I am speaking of, I am speaking of in 1955, I believe you indicated you came to Portland to help organize another company? A. Westway Petroleum Company.

Q. Is that company in some way connected with the Union Oil Company? A. Yes, it is a wholly owned subsidiary.

Q. Is that true to the present time? A. To the best of my knowledge.

Mr. Tilbury: I will confine it, that is all right.

A. We operated during the period of '55 through '57 under the brand names of Golden Eagle in the state of Oregon and United; and in the state of Washington as Eagle and United.

[885] Q. Mr. Logan, do you recall when, if they did, the Regal stations entered the Portland market?

Q. (By Mr. Tilbury) When the Regal stations entered the Portland market, yes? A. To the best of my recollection it occurred along about [886] October, 1956.

Q. How do you recall the date? A. Well, my recollection is quite clear due to the fact that in my opinion we, we saw a new concept in marketing.

Q. Would you define that for us? A. Yes, certainly. Heretofore, we had had in the state of Oregon what I would

describe as a fairly stable and tranquil market in which prices were fairly stable. We had had a few price upsets, but I would describe them of very short duration. In the industry we called them brush fires, and at this time Regal came in and offered I remember some very definite factors that entered into it. One thing that struck me particularly was the fact that heretofore cut-rate service stations had always sold at less than what major brands had sold at, but they had never advertised their prices. When Regal opened up, they opened up with advertisements of the finest, the best, and gave away a free Cadillac once a month and did one other thing, showed a price sign and advertised that it was major brand gasoline, which we had never seen before. So, in my opinion, it brought about a new concept in marketing that has had its effect felt.

• • • • •  
[888] Q. All right. Were there price signs that had appeared at service stations before the advent of Regal in the City of Portland? A. Oh, yes.

[889] Q. Now, were they any different than the signs displayed at Regal? A. Yes. We had never—well, one thing, Regal, of course, was the only secondary, as it purported to be, that advertised major gasoline was the major difference. Otherwise, there were price numerals to buy gasoline for less money and receive a free Cadillac.

• • • • •  
[890] The Witness: Well, if I understand the question, you are asking me if there was a difference in the level that the secondary service stations were selling at as compared with the major service stations; is that your question?

Q. (By Mr. Tilbury) Yes, sir, that is correct. A. Yes, sir, there was. It was a two cent differential.

Q. Was this something that was general or was it confined to any particular— A. No.

Q. —kinds of stations? A. This was general throughout the state.

Q. All right. Now, did you personally observe the price signs at the Regal stations? A. Yes, sir.

Q. I believe you indicated you made purchases yourself at the Regal stations? [891] A. That's right.

The Witness: I made a purchase at 39th and Powell, and, as I recall, I purchased it—

Mr. MacLaury: May we have the time, Your Honor? I don't—

The Witness: As I recall, in October of '56, to the best of my recollection. The exact day, I couldn't tell you. The money I paid—the cash money I paid was at the same rate per gallon as was offered at our Golden Eagle service station at 50th and Powell. However, I was given coupons which had a redemption value of two cents a gallon.

Q. (By Mr. Tilbury) How would you classify your station, the Golden Eagle station, in terms— A. As a secondary.

Q. As a secondary? A. That's right, or cut.

Q. Was your station giving the premiums that were being [892] given at Regal? A. No.

Q. Do you recall in what manner the stamps, or whatever it was you got, could be redeemed? A. They could be redeemed in their—oh, they had a beautiful variety of pots and pans and toasters and waffle irons and all manner of fine electrical appliances, in addition to smaller items, such as—I remember, I went back and redeemed mine in a rake, because I didn't make repeated purchases. So I went back and applied against the purchase of a grass rake to reduce the price of my grass rake.

Q. All right. Now, you may have described this previously. I don't mean to go over the same ground again. But was there any kind of other inducement besides the giving of stamps? I mean, was there a drawing of this kind? A. Yes. I received a ticket which would entitle me on the chance for drawing of a free Cadillac each month.

Q. Now, Mr. Logan, do you recall in the City of Portland whether the prices went up or down or remained at the same level in this immediate area after the opening of the Regal station at 39th and Powell?



[893] The Witness: Yes.

Q. (By Mr. Tilbury) You do have knowledge. Could you tell us the details, Mr. Logan? A. Well, I remember them very well, because from this point on our principal activity became conducting price surveys in such a manner that we could remain in a competitive position; because from this time on the retail market in the City of Portland and on further south, and it spread northward, southward, where the price generally depressed.

[894] Mr. MacLaury: Your Honor, if they are going to be allowed in the record, to preserve our record, I would like to make the further objection that the evidence has not established this witness as an expert in the Portland market on pricing and pricing effects in the '56-'57 period.

The Court: He has had twenty years experience with one of the major oil companys. I will leave it to the jury what value they want to give his opinion.

Q. (By Mr. Tilbury) Mr. Logan, did you have occasion to go to Vancouver from time to time during the claim period '55 through '58? A. Yes, sir.

Q. Why would you have occasion to go to Vancouver; any particular reason? A. Well, in the activities of operating an oil company, we would find particularly that during an area of disturbed prices, we had to watch many areas, because we found that our retail prices were quite often affected by areas not in our immediate vicinity. So we came to checking Vancouver on quite a regular basis.

Q. Can you tell me, sir, if you noticed whether the retail prices in the City of Vancouver went up or went [895] down following the opening of the Regal station? A. Well—

Q. (By Mr. Tilbury) Did you have stations in the City of Vancouver? A. No.

Q. All right. But you did have occasion to go over there?  
A. I certainly did.

Q. And the purpose of this was what, specifically? A. It was to determine what the market conditions were in the City of Vancouver and its environments.

Q. All right, sir. Now, I will ask you the question again, if I might: Did the prices decline or did they go up or did they remain constant? A. They generally followed the depressed condition that became apparent in the City of Portland.

• • • • •  
[897] Q. (By Mr. Tilbury) Would you define that term for us, [898] Mr. Logan. A. Brush fire in the industry to me, the meaning that I put on it, is a price disturbance or a period when, and it could be any number of reasons, somebody began to depress their prices and were followed by competition. In other words—may I give a for instance?

Q. Yes, sir. A. The brush fire that sticks most permanently in my recollection was in the City of Eugene. We had had a fairly stable market in Eugene. Not all prices were the same, but basically it was quiet. No price signs appeared. And we had a condition arise where one of the majors, it happened to be Shell, became disturbed with a particular cut-rate service station and commenced posting prices that they felt were competitive with that situation. This continued on for a period of either thirty or forty-five days, and the prices became quite depressed and the situation finally seemed to correct itself. And to me, this is a brush fire, one not of long duration. But nevertheless, it's a sizeable condition of upset in prices, if I make myself clear.

[899] Q. (By Mr. Tilbury) Would you describe the one that happened at the Regal as a brush fire? A. No, no.

Q. How would you describe it in terms as a brush fire? A. Well, to me Regal brought in a new concept of marketing and we have had depressed prices ever since.

Q. Were there more or less price signs that appeared in the City of Portland following the entry of Regal? A. There were more.

Q. And were they different in any way from price signs as appeared in the city before Regal entered? A. No, they just had numbers on them.

Q. I see. Now, did you have occasion to go to the City of Albany at any time during the claim period of '55 to '58? A. Yes, sir.

Q. Did you have a station in the City of Albany or the surrounding areas? A. We had two.

Q. Did you have occasion to observe the prices at that station and other stations in the City of Albany following the opening of the Regal station at 39th and Powell in the City of Portland? A. Yes, sir.

Q. Would you have done this regularly or frequently or [900] what was the situation? A. I would do it regularly.

Q. Now, can you tell me, sir, with respect to the price level as you personally observed it in the City of Albany following the opening of the station at 39th and Powell, whether the price level went up or went down or remained constant following the opening of Regal?

Mr. MacLaury: Here I believe you should have this pinpointed as to time further, more precise than just following the opening of the Regal station, Your Honor.

Mr. Tilbury: All right, I will be glad to add that.

Q. (By Mr. Tilbury) Can you pinpoint the time in connection with your answer, as much as possible? A. Just by recollection I would say it was within the early part of 1957.

Q. All right. What happened to the price level, as you observed it, at that time? A. The price level became depressed, it continued to go down. The Westway records would indicate the exact level, I am sure.

Q. Is that something of short duration or longer? A. Well, it carried on, it was of long duration.

Q. All right. Now, did you have occasion to go to the

Roseburg area at any time during this period? A. Yes, sir; yes.

[901] Q. Now, without going through all of the same background, and if you can pinpoint the time, can you identify it or, first, let me ask you, did you have stations in the Roseburg area? A. Yes, sir, we did.

Q. How many stations did you have there? A. It seems to me that we had two.

Q. Were they selling under the Golden Eagle brand? A. Yes, sir.

Q. Can you tell me then, please, what happened, if anything, to the retail price level in the City of Roseburg following the opening at 39th and Powell by Regal—

Mr. MacLaury: Your Honor, the witness has already indicated that is speculative and that the records themselves of Westway would show these prices better than he could testify, so we will object to the speculation of price depressions and time.

• • • • •  
The Witness: Well, the trend that was indicated in Roseburg was slightly different than—according to my recollection, than we had experienced closer to Seattle, in that the Roseburg price remained above the area for [902] quite a long time to the point that our volume was seriously impaired, our volume dropped and—

• • • • •  
The Witness: And it was not until the Roseburg market dropped to a level competitive with the area of, say, fifty miles north that their volume came back to where it was, and so I would say in my recollection that the level was later coming to Roseburg, but it came eventually.

Q. (By Mr. Tilbury) What way do you mean it came? A. That is depressed prices below what they had been came to Roseburg at a later period than it did, say, in Albany or Eugene.

• • • • •

[904] Q. All right. On the basis of your experience and some twenty-eight years, I believe you indicated, with the Union Oil Company, would you be able or is there in the trade something that could be defined as a gasoline marketing area for the City of Portland? Is there something of this kind that would be generally accepted or on the basis of your experience that you could define for us without asking you to define it now? A. Yes.

Q. Would you be able to make a definition of this kind? A. I think so.

Q. Could you define the area in terms of the 1955-58 period? A. Yes.

Q. All right, sir, and on the basis of that experience, how would you define the gasoline marketing area for Portland as it related to that period? A. To which period?

Q. The period, let's say, subsequent to Regal, or let's take during the entire period, '55 to '58, and if it [905] changed, if you could explain the nature of the change. A. The concept of the marketing area during this three-year period, I think, changed quite drastically. To begin with, I remember very well we felt that we could subdivide the City of Portland into, if I remember right, twenty-three marketing areas. In other words, we felt that we could meet competition where we found it within any one of these twenty-three areas.

Q. What is the area of the twenty-three? A. Well, we might be as concise an area as Barbur Boulevard for one mile up here, and then for some reason there would be an arbitrary line drawn there. In other words, the Northeast section out as far as 40th, in other words, just a block of—almost like a voting precinct, that was the original concept of the marketing area, but as time progressed, it became very apparent that this price disturbance would spread—

Mr. MacLaury: (Interposing) I object to this witness testifying as to what became apparent. I think if he wants to say what he saw individually and personally, he could testify, but to say generally that it became apparent to



others, I think is way beyond his scope, and I move to strike that part of his testimony.

The Court: Members of the jury, you understand this witness is not giving substantive testimony as to effect or [906] causation in connection with the issues between the plaintiff and the defendant as such. This witness is merely giving to you descriptions of marketing conditions and phases of marketing of gasoline as he in his opinion observed it in connection with his work for his company, and the Court is permitting this experience to be given to you by this witness just as background information for you to at a later time fit in the claim and counterclaims of the parties. That is the purpose.

. . . . .

The Witness: The best way I can describe a disturbance and its effect upon a marketing area is much like if [907] you had a placid pool of water that is absolutely smooth and you drop a pebble in the center of that pool, eventually the ripples will reach clear out to the outer edges.

. . . . .

[908] A. (Continuing) The effect of this on the concept of a marketing area was that the marketing area kept enlarging itself until, if we were to recognize that for instance the advent of a price disturbance on Broadway soon would affect us on Barbur Boulevard and vice versa. A Barbur Boulevard disturbance would eventually affect us clear out on 82nd. In other words, people who live in one side of the city and work in another quite naturally will buy gasoline where it is sold the cheapest. So, the concept of a marketing area kept enlarging itself until it became very apparent that a disturbance in Portland could be felt very effectively as much as a hundred miles in any direction.

. . . . .

Q. (By Mr. Tilbury) Did your company, either Westway or Union, change its identification of the marketing following the opening of the Regal station in those things you are apparently aware? A. Yes, sir.

[924] Q. All right. Now, just relating it to the practices of your own company, maybe you have testified to this already, but did the program—the dealer assistance program did change following the entry of Regal; is that correct? A. That's correct.

Q. Did that continue or did it stop within a few months, the existence of a dealer assistance or subsidy program? A. No. It has carried on, even to today.

[937] Q. And during the claim period, that is from '55 through '58, who would you define to be the major oil companies operating in this area? A. Oh, there were seven, I think.

Mr. McLaury: Just a moment. Could we have the area defined?

Mr. Tilbury: Well, I thought I said the Portland area. If I didn't, I will qualify it to that extent.

A. Portland area?

Q. (By Mr. Tilbury) Yes, sir? A. As I recall, there were seven majors. Would you like me to name them?

Q. Yes, sir, please? A. Shell, Standard, Union, Mobil, and the Signal which we consider along with Standard, Associated, Texaco. There's somebody else. You will forgive me. At any rate, there were seven.

Q. Richfield, would that be one? A. Richfield, Richfield.

[938] Q. (By Mr. Tilbury) Mr. Logan, during the 28 years that you were associated with the Union Oil Company, would you tell me as you observed whether the Union Oil Company would respect contract accounts held by other major oil companies; in other words, other companies be-

sides majors for that matter; what I am speaking of, to try to shorten this up, would be situations where there was an existing contract in effect between either a major or someone less than a major for a given period of time, was it the practice of Union to attempt to take away customers in that category during the period of their contract? A. Are you talking about the period of '55 to '58?

Q. Well, yes, we could limit it to that period? A. Yes.

Q. And how did it work; I mean what was the result?

A. Well, the result was that it worked primarily on what were considered in our language 100 percent accounts, and [939] those accounts in which he did not, you did not have leases on. You had merely a promise. For instance, if Standard had a product agreement with a given dealer, we would honor the contract until it had expired. We would not go in and try to make another contract on top of the Standard contract.

Q. In other words, to use an illustration, if Standard had a contract with Customer A for five years, you would not attempt to go in during this five years? A. That is correct.

Q. And if Mr. Perkins, we will say you had a contract with Perkins Oil Company who had one of its customers for five years, would the same apply? A. Yes, sir, we had that situation where we did honor it.

[942] Mr. Tilbury: All right, sir.

Q. (By Mr. Tilbury) Mr. Logan, as a result of your experience in the years that you have indicated, do you know whether or not truckers would on occasions or more than one occasion, if there were a differential in prices between two locations, would they have a tendency to buy at one location as against another?

[943] The Witness: Yes, sir, I can give you some, I think, very pertinent observations, because we had one of the

largest truck stations in Central—Western Oregon at Albany known as the T and R truck stop. And any time that the market price or the trucker's price, if you want to call it that, for fuel was lower in Portland, this man's volume was very seriously hampered, and we felt it necessary in order to maintain a satisfactory volume at this truck station to keep him competitive with Portland prices. So they very definitely followed the prices even more than the normal retail trade due to the fact that they are over-the-road and they are larger storage. They can move.

. . . . .

[944] Q. (By Mr. Tilbury) Now, you have answered Medford. Do you know any situations where the products moved by truck further north than Medford which originated in the Bay Area? A. No, sir.

Q. In San Francisco? A. No, sir.

Q. Would there be any particular reason for that, to your knowledge? A. It would just be the economics of it. You could buy [945] gasoline cheaper in Portland and truck it any place as far South as probably Grants Pass cheaper than you could truck it out of—out of the Bay Area.

. . . . .

The Court: It will be overruled.

Q. (By Mr. Tilbury) Can you tell me, Mr. Logan, was it commercial or private accounts as such, that is, private-commercial accounts in those situations where they had their own pump, their buying practices, did it change following the entry of the Fortune stations or the Regal in Southern Oregon? A. Yes, sir.

Q. Or the Regal stations in Portland? A. Yes, they did change.

. . . . .

[948]. Cross-Examination

By Mr. Mac Laury:

. . . . .

[955] Q. Now, in any event, you are willing to concede now, I take it, that price signs had appeared prior to the

advent of Regal to the extent that the city fathers thought it necessary to pass an ordinance? A. That is correct.

Q. So you have been in error in some of your testimony here with respect to time periods and what occurred at one time with respect to what occurred at another time? A. Not entirely.

Q. Not entirely, but I say, on occasion you have been in [956] error in some of your testimony with respect to time periods? A. Obviously I was in this instance.

[965] Q. Now, what generally would be the situation then with respect—what generally was the relationship between the retail price of an independent brand and a major brand? A. Usually 2 cents.

Q. So, my question then more often than not the minor brands would be in your survey 2 cents below the major brands; that was my question? A. More often than not they would be.

Q. Yes. A. In a disturbed area, my recollection is that quite often this 2 cents would diminish to one cent.

Q. I see. Then when you are talking about 2 cents differential, you are talking about a situation that you consider to be normal and not a price war situation? A. That's correct.

Q. But, is it your testimony then where prices tended to become depressed and competition became hotter, then that differential would close up? A. That's correct.

[966] Q. At any particular time there might be a variation between a General Petroleum station in South Portland and a Chevron station in North Portland of three to four cents? A. I would agree with that, yes.

Q. That is my only point? A. That's right. That's right, yes.

Q. Now, you testified at quite some length about this new concept of marketing; and you mentioned price signs being used by Regal, and you mentioned the promotional plans, the use of premium stamps? [967] A. Yes, sir.



Q. You also mentioned that the promotional plans such as the raffling of a Cadillac? A. Yes.

Q. And now so that the jury doesn't—well, let me put it this way. That Cadillac wasn't one Cadillac in Portland given away every week, was there? A. I didn't so testify.

Q. No, I know you didn't. That is why I am asking you to straighten it out. A. As a matter of fact, no.

Q. As a matter of fact, there are Regal stations in California? A. Yes.

Q. Arizona? A. That's correct.

Q. In Southern California? A. Yes.

Q. As well as in Oregon? A. Right.

Q. When you advertise one Cadillac being given away, that does mean it was one Cadillac for all the entire chain of stations of California, Arizona, and Oregon, is that correct? A. That was my understanding.

. . . . .  
[1968] Now, you testified to this new concept in marketing; now, in your experience in the retail business, this new concept of advertising prices, it was not very much different than one of the large super markets used— A. Not at all.

Q. —when they posted their signs on the windows of the various prices to meet a particular special deal on butter; it is about the same? A. That is correct.

Q. It serves the same purpose? A. Right.

Q. And the department stores who advertise in the newspapers? A. That's right.

Q. Newspapers and radios on clothes; special prices on shoes?

Now, in your experience, it was this aspect of this new concept of marketing that you say had the major impact on the market? A. And it was what?

Q. And it was this new concept, the advertising and this [1969] sales promotion, that had the major impact? A. Right.

Q. And did you find in your investigation into this retail operation that the people who drove into the Regal

stations did so because they appreciated knowing what the price was going to be before they bought their gasoline? A. They certainly did.

Q. It was rather something of a service that was offered to the public that the public was apparently attracted to, is that correct? A. That is correct.

Q. Now, you testified, Mr. Logan, that these dealer assistance programs came into effect in order to help the dealer during a price war or price disturbance situation, is that true? A. That is true.

Q. Now, to your knowledge, were—was any company, major or minor or independent, extending price assistance to its dealers in the Portland area before October, 1956? A. I am sure they were.

Q. You are sure they were? A. Right.

Q. And would the fact that a company was offering dealers or extending to its dealers price assistance in the cases you said, that in the area that that price assistance extended [1970] there was some kind of price disturbance? A. That's right.

Q. And would the corrolary be true that when these companies stopped extending the assistance that the price disturbance was likely to pretty well clear up? A. I would think so.

• • • • •

Q. Now, it wouldn't be your testimony, would it, Mr. Logan, that these progressive price disturbances in Portland after 1956 were due solely to the advent of the Regal stations, would it? A. No.

Q. There would be other factors involved? A. Oh, surely, it could be any one of a number of factors.

Q. Other intervening factors? A. Sure.

Q. It is the truth, isn't it, Mr. Logan, that in the Portland area in 1955 and '56, you recall it was after the Korean War, the supply of gasoline generally used by [1971] the public was greater than it was in '53 or '54? A. The supply?

Q. The supply of gasoline on the market was greater?  
A. Was in surplus?

Q. Correct. A. Was in surplus?

Q. Yes. A. Yes. Yes.

Q. And there has been a substantial expansion in the refining facilities, for example, of the Union during the past three or four years? A. Definitely, yes.

Q. And that was true in '54? A. Right.

Q. But it had an impact on not only the Portland market but on other markets through the United States? A. That's correct, it did.

[972] Q. You would have no way of knowing. Now, during this period of 1955, '56, and '57, there were other companies, were there not, other than brand dealers—dealers selling brands other than Regal that were using stamps, green stamps? A. Green stamps?

Q. Yes, green stamps. And Westway used green stamps?

A. Oh, sure.

Q. Did some of the Champion stations down in Southern Oregon use green stamps? A. I'm sure they must have if they possessed them.

[973] Q. Now, I believe you testified that as far as Westway is concerned, its dealer assistance program continued on after December, 1957? A. Oh, yes.

Q. And in 1958? A. Right.

Q. And in 1959, and it exists today? A. Correct.

Q. Many of the aspects of the market that you have testified to with respect to use of price signs, price depressions, [974] in 1957, they occurred in '58 and '59 and even today; isn't that true? A. Yes, sir.

Q. You wouldn't attribute—you wouldn't attribute these depressed prices to the supply of any particular retailer or chain of retailers by any particular supplier or that one factor alone? A. Not to the continuing ones, no.

[988] Direct Examination

By Mr. Tilbury:

"Q. Would you state your name, sir? A. Howard G. Vesper.

Q. Your residence? A. 6160 Acacia Avenue, Oakland 18, California.

Q. Your occupation? A. Executive.

[989] "Q. And in what role are you? A. I am presently President of Standard Oil Company of California, Western Operations, Incorporated.

Q. Your offices are in this building? A. Here.

Q. How long have you occupied that position? A. Approximately four years.

Q. What is your authority in that post? A. I am the principal executive responsible for the operation of that company.

• • • • •  
Q. Under what circumstances would you make the final decision and under what circumstances—by "you", I mean your company—and under what circumstances would it be decided by the holding company, in a general way?

[990] "A. To answer that I must know what you mean by a final decision. A final decision in what area and on what?

Q. Well, if you can explain the differences, perhaps this would be easier, because I am not sure that I have enough knowledge to ask the question. A. Well, I have but my Board of Directors in Western Operations Incorporated are the general authorities for a final decision on most operating matters. However, such basic questions as a change in posted price of crude oil to any general extent, a change in posted price generally of gasoline or other principal products, these would be referred to the parent company executive committee and Board of Directors to what is called a contact officer. There is a contact officer of the corporation designated for each of the operating companies through which we run our business. A particular one for Western

Operations, Incorporated is Mr. Owen Miller, President of the corporation.

[997] "Q. Is it a fair statement to say, then, that prior to 1958 there was no established policy with regard to assisting jobbers with regard to a price war? [998] "A. Yes, there was a very definitely established policy. The policy was not to do it.

Q. All right. A. There was discussion of it, but we had not felt it was a proper business thing to do at that time."

"Q. Now, comparing this with the Chevron stations, has there been a similar development there or has there been an established policy to protect them at a different time? A. The policy here too has been fluid. In the years that you mentioned, 1954 to '58, there was a policy of giving some assistance to Chevron dealers in times of depressed prices. That policy has become more lenient as time has gone on, for exactly the same reasons that I have outlined, and we give more assistance to Chevron dealers today than we did then.

Q. Now, in the years from 1954 to 1958 was six cents the basis of this computation, or was there an established figure? A. The computation was an entirely different kind of a computation, because we are talking here about dealers, not about jobbers who sell to dealers.

Q. Yes. [999] "A. The basis for our Chevron dealers at that time started with what might be called a normal margin above tank wagon, as I recall it, of about four and a half to five cents, in that order of magnitude. Then as the price dropped there was a sharing of the drop between the company and the dealer down to a figure of something on the order of three and a half cents above tank wagon.

"Now, as time has gone on the starting margin has increased somewhat because of the costs of doing business



and of the changed conditions of business. The margin today at which we start is six cents on regular gasoline and six and a half on premium. Today our policy is to take three-quarters. The company takes three-quarters of the drop with no stop, unless competition forces us to put a stop in, which sometimes happens.

Q. If the price should go to an extremely low figure, would you reach a situation where the Chevron dealer would have no margin to work with at all? Is this possible even on the  $\frac{3}{4}$ - $\frac{1}{4}$  formula? A. This is possible within our present formula. As a practical matter. I don't think we have ever reached that point, because before we get there some other company or companies with whom we are in competition will establish some kind of a stop price for their dealers, and we are forced to meet that as a matter of competition.

[1000] "Q. Going back to the earlier period, when I think you said that there was a sharing down to three and a half cents, if I am remembering your testimony correctly, what happens if it goes below that figure or did go below that figure? A. In that case it would stay at three and a half cents.

Q. So that a Chevron dealer would have been assured of three and a half cents as a minimum? A. Yes.

• • • • •  
[1044] Mr. Bonyhadi: Your Honor, we have the deposition of Mr. Harris now, **Ben Harris**.

The Court: Very well.

Mr. Bonyhadi: Mr. Tilbury will read himself, he took the deposition, and I will read Mr. Harris' answers.

• • • • •  
"Q. Would you state your name, please? A. B. F. Harris.

Q. And your home address, Mr. Harris? A. 4237 92nd Southeast.

Q. Seattle? A. Mercer Island, Washington."

Q. Your occupation, sir? A. I might say I am retired at the present time.

[1045] "Q. What was your occupation prior to retiring? A. In the wholesale gas distribution.

Q. Do you have your own company? A. Yes.

Q. And the name of the company, sir? A. Harris Distributing Company and Harris Petroleum Company, Incorporated, succeeded that.

[1050] Q. When was this Harris Petroleum Company first started? A. I think in May of 1947.

Q. Where were your stations located, Mr. Harris? A. Tacoma, Seattle, Renton, Mt. Vernon.

Q. However, there have been other locations in the past that are no longer serviced by any of your stations? A. Yes.

Q. Where were these located, sir? A. In the same location, same general area.

[1051] "Q. Did you market any further south than Tacoma? A. We didn't market any further south than Tacoma, no.

[1052] Q. Were the retail stations that you owned, were they manned by company employees? A. We tried as much as we could to get lessees for them, although we could have operated some of them. We operated them both ways, to his sorrow and detriment.

[1055] "Q. I believe you said you started with Signal Oil and Gas about 1947? A. 1948.

Q. Did you continue to buy most of your products for a considerable period of time from Signal Oil and Gas? A. Well, almost. 1959. About ten full years anyway.

Q. Did you buy heating oils from Signal Oil and Gas Company? A. No, we didn't. They didn't have any for sale.

[1956] "Q. How was it sold by your company, the heating oil? A. Well, we sold it to various heating oil dealers like that.

Q. Where were they located, sir? A. Well, I just happened to have in mind there was one out at Midway. That's south of Seattle. Another fellow out here on Holman Road.

Q. Seattle? A. Yes. I think those were our two biggest customers.

Q. Did you sell any south of Midway?

Mr. Hilliard: We objected because there is no time specification.

Mr. Bonyhadi: Line 20, page 1181 of the transcript.

"Q. Did you sell any south of Midway? A. We—yes, I am sure we did and locally in Tacoma we have an interest in a fuel oil distribution there. This fellow sells about, I would say, 600,000 gallons a year.

Q. Did you sell any in Olympia? [1057] "A. Did we sell any in Olympia? A. Yes."

Mr. Hilliard: I objected to that, your Honor, on the basis the witness indicated that he didn't remember.

Now, your Honor permitted the answer to it. "Did you sell any in Olympia? A. Did we sell any in Olympia?

Q. Yes. A. Gosh, I don't remember. We may have sold some to Henry Maxwell down there, although I don't recall. We sold him some products down there from time to time.

Q. Did you make any sales in Centralia of either gas or heating oil? A. I don't know if we did or not. If it was it was some infinitesimal quantity that didn't amount to anything.

[1095]

Mark D. Leh

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tilbury:

Q. Would you state your name, please, for the record?

A. Mark D. Leh.

Q. Where do you live, Mr. Leh? A. Pasadena, California.

Q. What is your occupation at the present time? [1096]

A. Consultant.

Q. For which company? A. For various companies.

Q. Can you identify some of these for us, please? A. Well, recently Lee Manufacturing and Alameda Refining Company.

Q. Where is that located, sir? A. In Los Angeles.

Q. All right. Have you had experience in the petroleum business besides your present experience with Alameda Refinery? A. Yes.

Q. Will you tell the jury, please, about your experience?

A. I graduated as a geologist in 1924 and then entered the marketing of petroleum products at the retail level for the Pacific Coast and introduced General Petroleum gasoline in this area in the whole Pacific Coast, which is now Standard Oil of New York and Mobil gas.

Q. Could you fill us in a little bit, the highlights of this career? How long were you with General Petroleum Company and Standard Oil of New York? A. About fourteen and a half years. 1924 to late 1938.

Q. What positions did you occupy during that time? A. Started as a scrip salesman and ended as general sales manager.

[1122] Q. (By Mr. Tilbury) Mr. Leh, have you had some experience with credit cards and the development of credit cards in your experience in this industry? A. Yes.

Q. Would you give us some indication as to how much experience you have had in that connection?

[1124] A. In excess of thirty years.

Q. Could you tell us what it costs to develop such a program as far as your experience is concerned, to your knowledge?

Q. (By Mr. Tilbury) Well, during the period of 1955 to '58, to simplify it, would you tell us what the cost would be? A. The cost would be one and three quarters cents per gallon at the retail level for credit card business.

[1125] Q. (By Mr. Tilbury) What does that include, sir, the one and three quarters cent? A. Well, it includes the entire system. It includes opening the account, making of the credit cards, mailing it, monthly statements, billing, and the average consumer uses seventy gallons of gasoline per month, so he makes ten purchases per month, that means ten billings. And the whole cost of operating that system is right at one and three quarters cents per gallon.

[1126] Q. Mr. Leh, during the period 1955 to '58, who would the major companies be in the Pacific Northwest? A. The major companies?

Q. Yes, sir. A. The term "major" is a trade designation and it designates Standard, Shell, Texas, Mobil, Richfield, Union, and Tidewater. I believe that is seven.

[1127] Q. You would not classify Hancock or Norwalk in this category? A. No, they would be classified as independents or some people call them minors.

Q. Or the Signal Oil and Gas Company was not included in your gas companies? A. Signal Oil and Gas Company?



Q. Yes, in the period '55 to '58, would you have classified them as a major? A. No.

Q. All right. Did they have a refinery, to your knowledge, during the period '55 to '58?

• • • • •

The Witness: No, not to my knowledge.

Q. (By Mr. Tilbury) Would you classify them as a jobber? Would that be a proper term? A. Yes, they were a jobber, so far as gasoline was concerned.

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[1131] Cross-Examination

By Mr. Hilliard:

• • • • •

[1150] Q. Well, this, you would then correct the statement that you had witnessed the diminishing volume of jobbers in volume and numerical of Standard Oil Company of California? A. I would add in relation to the total petroleum industry.

[1151] Q. I see. A. They enjoy a lesser and lesser position.

• • • • •

[1239] **Clyde Perkins**

the plaintiff herein, thereupon resumed the witness stand as a witness in his own behalf, and, having been previously duly sworn, was further examined and testified as follows:

**Further Direct Examination**

By Mr. Tilbury:

Q. Mr. Perkins, when you were on the stand last week, as I recall, we had just started discussing the opening of the Regal stations in Portland.

Do you remember about where we were at that time? The opening of the Regal stations in Portland. A. Well, I just don't know whether I—yes, I believe you did ask me if I remembered the opening of the Regal stations in Portland.

Q. All right. Did you personally drive by any of these stations yourself? A. Yes, I did.

[1240] Q. All right. Did you go by the one at 39th and Powell before the one opened at Broadway and Wheeler? A. Yes, I did.

Q. Would you describe for us what you personally observed at that time? A. Well, I observed something that was entirely new to me. I observed large price signs. I observed the fact that they told me that it was major gasoline. There was a large sign up there said, "Best major gasoline." I inquired from among the operators there—

[1243] Q. (By Mr. Tilbury) My only question, Mr. Perkins, is, did the price level at that station go up or down following the entry of Regal stations?

Mr. Hilliard: I object to the form of the question, Your Honor, which inherent in the question, contains an implication of cause and effect so far as Regal.

The Court: It will be overruled.

The Witness: The price level went down.

Q. (By Mr. Tilbury) All right. Did it come back up within a short time or otherwise? A. It did not.

Q. In what way do you mean? Would you explain what you mean by that? A. Well, it went down and continued to go down and I think it has been down ever since.

Q. Did you have occasion, Mr. Perkins, at any time to discuss the Regal stations with any Standard officials? A. Did I discuss the Regal station with the officials?

Q. Yes, sir. A. I did.

Q. Could you identify the individual or individuals first without relating the conversation? A. I can identify them by name. Mr. Johnsen and Mr. McClanahan.

Q. And their first names, just for the record? [1244] A. Mr. August Johnsen and Mr. E. J. McClanahan. And I discussed it with Mr. Cuyler also.

Q. Howard Cuyler? A. Howard Cuyler.

Q. Let's take your conversation with Mr. Johnsen first. Did you have more than one conversation with him about Regal? A. I had several conversations with him about Regal.

Q. All right. Can you identify the specific time and places of these conversations? A. Well, shortly after they —when they first opened, I didn't know that they had any connection with Standard Oil and I had a conversation with them then, but later on in the spring of the year or after the first of the year I had a conversation, a direct conversation, with Mr. Johnsen and with Mr. McClanahan about these stations.

Q. All right. Where did this conversation or conversations take place? A. In the Standard Oil office in San Francisco.

Q. And who was present? A. I can't tell you all that was present, but I told you who I directed my remarks to.

Q. All right. What was said by you at that time, do you recall? A. Yes, I complained about the Regal situation and one [1245] thing in particular was this credit card situation. We being an independent and were forbidden to advertise to the public that we were selling a major gasoline or Standard gasoline, and they had Standard gasoline and advertised it as a major brand and were taking all credit cards and that was having a terrific effect on our business.

Mr. Hilliard: I object and move to strike as irrelevant and immaterial, incompetent to any issue in the case. The time and place has not been specified.

The Court: The witness told us where the conversations took place. It will be overruled.

Q. (By Mr. Tilbury) Do you recall anything else that was said by yourself at this conversation you just related at that particular time and place? A. Well, Mr. Tilbury, we had lots of conversations about it. They were a sore spot with us. I wanted to work out a plan with Standard to accept all credit cards and they wouldn't let me do it.

Mr. Hilliard: Objection, and move to strike that, Your Honor, no showing in this case at all that Standard Oil Company has any right or authority or position to permit someone to accept credit cards of all types.

The Court: It will be overruled.

Mr. Hilliard: No claim in that regard either in the lawsuit. [1246] A. (Continuing) Then, in '56, in the year '56, we learned that after Regal came into the field that they were given subsidies through their own stations and to the Signal stations, and we asked, I asked them particular and insisted that they give us a subsidy the same as they give their own stations.

Mr. Hilliard: Object, your Honor. The fact of a request or a discussion about a subsidy would not be pertinent to any issue in this case.

The Court: Well, I can't tell from the witness' testimony here whether he is talking about the official stand of Standard or somebody else.

The Witness: Shall I answer it?

The Court: So you can tell us with whom you had these conversations.

A. (Continuing) I had my conversations with Mr. Johnsen, Mr. Cuyler. Mr. Johnsen was the President of the S.O. Company. Mr. Cuyler was the General Sales Manager of the Standard Oil. I had been with Mr. Vesper, who was the Executive Vice-President in charge of all Western marketing. I had it with Mr. McClanahan, who was the Vice-President of the Standard Oil Company of California.

The Court: The objection will be overruled.

Q. (By Mr. Tilbury) Now, Mr. Perkins, with respect to, leaving for a moment the subsidy program, with respect to [1247] Regal, did you have a conversation with Mr. Johnsen with respect to the presence of Regal stations?

Mr. Hilliard: I object. The conversations that were had in the presence of Regal were not at issue here.

The Court: Overruled.



A. (Continuing) I believe I had conversations with all of them with respect to Regal.

Q. (By Mr. Tilbury) Did Mr. Johnsen ever come to the Portland area at any time to visit this marketing situation?

A. Yes, he did.

Q. During the period I am now speaking of from '55 to '58? A. Yes, sir.

Q. Did you accompany him on any of his visits in the Portland area? A. I didn't personally accompany him to any of the stations or make any trips with him.

Q. All right. Do you know what his purpose was in coming to the Portland area? A. To look into the market conditions.

Q. All right. And while he was here, did you have occasion to discuss here in Portland or Vancouver, wherever the discussion took place, anything about the Regal? A. We discussed it in my office with Mr. Johnsen with reference to Regal, Signal subsidies and the general market conditions.

[1248] Q. All right. Now, did you make reference to any of the advertising being done at the Regal station in any of these conversations? A. We discussed it at great length and all phases of it.

Q. All right. Did you describe the signs that you have reference to earlier? A. And he—yes, sir, and he told me that he had seen it.

Q. All right. Did he make any other comment besides that? A. Oh, I can't tell you all the comments that he made, but we had continuous conversations about it.

1253 Q. (By Mr. Tilbury) Mr. Perkins, would you describe for us, please, the conversations you had with the Standard people; I am not asking you to repeat something you have already repeated, but anything else you haven't covered in respect to the subsidy program; you have already described with respect to Regal; I am asking about the subsidy program? A. You want me to state the conversations I had regarding subsidies?



Q. And only with the Standard people now, not with anyone else? A. We had a conversation with the Standard people with Mr. Johnsen and Mr. Vesper regarding subsidies while we were negotiating the 1956 contract.

Q. What was said by you and what was said by them, as you recall it? A. I stated to Mr. Vesper that we understand that they had been given some subsidies out there, and I asked that our contract be tied to Signal Oil so when they got subsidies we would get the same subsidies they got.

[1254] Mr. Hilliard: I move to strike—

The Witness: Mr. Vesper stated and he said there may have been some subsidies given, but he says, "We are not going to go into any subsidy program. We are not giving them now, and we do not intend to give them."

Mr. Hilliard: I move to strike this, Your Honor, on the grounds that it would be irrelevant and immaterial and incompetent, and also on the further ground that the same subject matter has already been testified to by this witness when he first took the stand.

The Court: Well, we have the contract in evidence now, and I will leave that in the record in connection with the negotiations leading up to the contract.

Q. (By Mr. Tilbury) Now, did Standard also indicate whether there was a subsidy program in effect or not? A. He said there was not any in effect at that time.

Mr. Hilliard: I object, Your Honor, and move to strike.

The Court: It will be overruled.

Mr. Hilliard: It is not relevant to any issue.

Q. (By Mr. Tilbury) Now, you are referring to a particular conversation at that time; right? A. Yes, sir.

Q. Was there another conversation at a later time dealing with the issuance of the subsidy between yourself and the officers of the Standard Oil Company of California? [1255] A. Yes, sir.

Q. Would you describe for us those conversations and identify the time and place, if you can, please. A. In the spring of '57. I can't tell you the exact day. But I went

to San Francisco and talked to them about this whole situation, and we explained to them that we couldn't live under the present circumstances, that they would have to give us subsidies. And they stated emphatically that they were not giving subsidies and they would not give subsidies.

Mr. Hilliard: Your Honor, I move—I object to this and move to strike it, and I don't believe under any theory of this case counsel can make any representation to the Court that this can be tied up as relevant and pertinent evidence. The issue here would be whether someone else received a more favorable price than the plaintiff did or accounted at a lower figure and whether that resulted in damage. The fact that a statement may have been made about it at one time or the other, in any event, would be irrelevant I submit, and all the plaintiff's objective is to establish the fact, not what was said or may not have been said on a given occasion. I think it is highly prejudicial to the defendant, and I don't believe under any theory that it could ever be connected up.

I move to strike it, Your Honor.

[1256] The Court: Well, of course, this evidence being offered on the other side probably would be objectionable so far as the plaintiff is concerned, and this being negative as to plaintiff's case. But if it was a matter of inducement for something that the plaintiff did thereafter in connection with its subsequent dealings under the contract, it would have some bearing.

Mr. Hilliard: Well, Your Honor, I think it is stated, the problem, and I don't believe this is a lawsuit based upon any type of inducement. It is not a misrepresentation case or it is not—

The Court: Well, if it isn't tied in as a matter of being inducement for something that the defendant did, it is beneficial to the defendant and doesn't hurt him.

Mr. Hilliard: Well, we definitely feel, Your Honor, that it is not beneficial but it is prejudicial, and we would urge,

if that is Your Honor's feeling, that it would not be permitted to come on the record on the grounds that I have stated.

The Court: Well, I don't want to anticipate something that I don't need to. What does the plaintiff contend for this negative evidence?

Mr. Tilbury: Well, Your Honor, it does reflect on the issue of credibility. It also reflects—I think we will develop evidence, and there has been evidence already—the [1257] existence of this program. And in that sense, it merely goes to background to show the relationship, the dealings, the manner in which statements were made over the years.

The Court: Under the basis that it tends to be evidence of prior inconsistent statements or something of that nature?

Mr. Tilbury: Yes, sir, among other things.

The Court: Well, possibly that might be admissible on rebuttal in the event there is some testimony on that side.

Well, it is in the record, it is negative. It is a disavowal of the officers of the defendant that there was any subsidies going on at that time. It is in the record, and I can't very well deal with it; and I will leave it there. It is of no import, members of the jury, unless there is some other evidence in the case to show that the plaintiffs made some reliance upon those statements of the officers of Standard.

I will leave it in on that basis.

Mr. Hilliard: Your Honor, so our position is clear, I would renew the motion to strike and urge the Court to instruct the jury to disregard this testimony.

The Court: I will leave the record the way it is now with leave for further request in connection with it as the case develops.

Q. (By Mr. Tilbury) Mr. Perkins, did you have any conversation—let's take the opposite side of the coin to avoid [1258] any objections. Did you have any conversations

with any of the Standard people at which they either did—well, let's say at which they said there was a subsidy program in existence? Did this come about at any time?

• • • • •

The Witness: Yes, sir.

Q. (By Mr. Tilbury) Can you identify the time and place, without going into conversation so that Mr. Hilliard can object if he wishes? The time and place of this, Mr. Perkins? Now, is my question clear? I am asking now of situations where they admitted, if they did, that there was a subsidy program.

• • • • •

The Witness: The time was in the summer of '57. The conversation was in the Standard Oil office—

Q. (By Mr. Tilbury) All right. Stop right there. A. —at San Francisco.

• • • • •

[1259] Q. (By Mr. Tilbury) Who was the Standard representative, or if there was more than one, please identify them? A. The representative that I talked to at that time was Mr. Johnsen.

Q. August Johnsen, I assume? A. Yes, sir.

Q. All right. Now, was there anyone else present from Standard at that time besides Mr. August Johnsen? A. I don't believe there was anybody else in his office at the time.

• • • • •

[1260] Q. (By Mr. Tilbury) What was said, Mr. Perkins, at that time? A. You mean as to subsidies?

Q. Yes, sir. A. There was a long conversation that lasted two days. But as to subsidies, he said that they were given some subsidies and they was taken under advisement of a way to work out a plan so we could participate in the subsidies.

• • • • •

[1261] Q. (By Mr. Tilbury) Now, were there other discussions of this sort that you have just described? I am not trying— A. About subsidies?

Q. Yes. I am not trying to take a positive rather than the negative route, of which they acknowledge that they did and there was a subsidy program. Were there any other conversations? A. Yes, there was another conversation.

Q. All right. Would you describe where and when that happened? A. That was in the fall of 1957.

Q. Where? A. And that was with Mr. Johnsen, and that was by telephone.

Q. Where were you and where was Mr. Johnsen? A. I was in my office, and he was in his office.

Q. You were in Vancouver and he was in San Francisco? A. Yes, sir.

Q. Would you tell us what was said?

Mr. Hilliard: Your Honor, again, I object to this. I think your Honor's prior ruling was on the basis that it may show some admission. But the fact of subsidy is the [1262] matter before the Court, and all of the documents and exhibits that have been filed, I think specifically Exhibit 81, shows the detail of subsidy. So it could not be offered as relevant evidence on some admission against interest as to the fact of the subsidy during this period. I again object on all the grounds stated to Your Honor, and that it merely would go to a question of credibility, if that were an issue in the case, and it is not at this point.

The Court: Well, this may or may not tend to corroborate some other evidence. I don't know. It will be for the jury. He may proceed, and the motion will be denied.

Mr. Tilbury: Perhaps I may save a little time. If the defendant is conceding at this time that there was a subsidy, we may be able to save this—

Mr. MacLaury: Well, Your Honor, we have never denied that there has been a price assistance program of the



Standard Oil Company to its dealers, and it has never been an issue in this case. I say it was irrelevant—

The Court: I think the area has been to persons and areas of which it was applicable. I think that seems to be the area.

Mr. MacLaury: There are questions of fact here, certainly, about the quantity of subsidy, and that is all spelled out in the documents and Exhibit 81. There is no question that Standard for many years has assisted its [1263] dealers in price war situations. We have never denied it.

Mr. Tilbury: Well, I can't quite accept that, because that is contrary to the evidence to say you never denied it, and it is contrary to the position that has been taken.

Q. (By Mr. Tilbury) Mr. Perkins, without going into all of this conversation, the one that you tell us about, tell us the one just about subsidies briefly. A. In this telephone conversation?

Q. Yes, sir. A. I told them what our condition was up here and we had to have help, and he says, "I know you do, and I'll send you up the forms. And you distribute the forms to your stations and have them take immediate readings, and when you assemble them all, get them all assembled, then send them to me and we'll pay you the subsidy."

[1264] Q. (By Mr. Tilbury) Now, Mr. Perkins, did you get these meter forms? A. I did.

Q. Did you distribute them to— A. I did.

Q. —accounts? All right. Did they keep meter readings? A. Yes, sir.

Q. What did you do with the meter readings if you got them back? A. We mailed them all to the Standard Oil Company.

Q. All right. Did you receive from Standard anything in the way of subsidy? A. We did.

Q. To what extent? A. On one account down at Albany, we received a small amount. I can't tell you the amount. Somewhere between sixteen and a hundred dollars. Down at Jefferson, we received a small amount. I think it was Jefferson or in that county. We received a small amount of a few dollars. I can't tell you how much. And as far as I know, that is all—all that we ever received from them in the way of [1265] subsidies.

. . . . .

[1272] Q. Now, had Mr. Fraser been receiving some kind of assistance prior to that time, if you know? A. From us?

Q. Yes. A. Yes, he had.

Q. What kind of adjustments had he been receiving? A. Well, we gave him a price adjustment and we had given him, waived rent, we made deliveries for him and anything else we could do to keep him operating.

. . . . .

[1275] Q. (By Mr. Tilbury) Mr. Perkins, could you tell us, please, the products that you obtained from the Standard Oil Company, were these products the same products that were being sold at Standard stations and Chevron stations during the period of our claim?

Mr. Hilliard: I object to the competency of this witness to testify to the product that was marketed in some other operation.

The Court: I think it would be more helpful if this witness would tell us the source of his supply, and the jury can determine.

Q. (By Mr. Tilbury) Mr. Perkins, would you do that, tell us the source of the supply? A. I was assured from the officials of the Standard Oil Company, Mr. Johnsen, Mr. Vesper, and all of them, that we had identically the same products as were sold to the Chevron and the Standard stations.

Q. All right. The question, though, related to the source, where did you get your products? A. We got our prod-

ucts from the Standard Oil Company at Willbridge. You are speaking of Vancouver now?

Q. Well, in that case. A. Or in Oregon—

[1278] Q. (By Mr. Tilbury) (Continuing) Which Standard Oil official do you have reference to, Mr. Perkins? A. I have reference to Mr. Johnsen.

Q. He would be head of the Jobber Department? A. Yes, sir.

Q. Now, what did he say with regard to the quality of the gasoline being sold at the Signal stations as compared with your quality, if anything? A. Well, Mr. Johnsen and Mr. Cuyler and Mr. Vesper and all of them told me that the gasoline that is sold at the Chevron and Standard stations was identically the same gasoline that we had purchased, that we purchased.

[1280] Q. (By Mr. Tilbury) I wasn't asking with relation to one station, Mr. Perkins; I am asking generally, had retail gasoline service stations in the Vancouver following the opening of the Regal station at 39th and Powell, would the price level at Vancouver go up or go down or did it remain constant; what was the situation? A. The price in the service stations in Vancouver after the entrance of Regal went down.

Q. All right. Could you give us some indication as to time as to when this happened? A. The 39th and Powell station was opened, if I remember right, in the fall of '56, 1956; and immediately or very shortly after their opening, the price in Vancouver went down.

Q. All right. Now, are you speaking in general now, or just in regard to a few stations? A. I am speaking in general.

Mr. Hilliard: May I ask, is that the major and minors?

Q. (By Mr. Tilbury) Is it both kinds that you are speaking of? A. I am speaking of all the stations.

Q. Majors as well as minor stations, is that correct?  
A. Yes, sir.

[1281] Q. All right. Now, can you tell me, Mr. Perkins, if you had occasion to observe the price conditions in Longview following the opening of the station at 39th and Powell at any time? A. The prices in Longview remained practically the same for about 30 days after Regal.

Q. And what happened? A. And then they went down.

Q. And how long did they remain down, or did they in fact— A. I think they are still down.

Q. All right.

Q. (By Mr. Tilbury) Did you have occasion to go to [1282] Centralia? A. Yes, sir.

Q. And would you tell us what the situation was there as you observed it following the opening of the Regal station at 39th and Powell? A. Well, I can't tie that to 39th and Powell because there was other factors at Centralia.

Q. All right. What other factors? A. A depressed market.

Q. (By Mr. Tilbury) Can you give us the time? A. We had a depressed market in Centralia. Well, we had little brush fires off and on, and we had a depressed market in '56 and '57, and I believe as of '55.

[1292] (The following proceedings were had out of the presence of the jury:)

The Court: Does counsel have a matter?

Mr. Mac Laury: Yes, just one short matter, Your Honor.

The Court will recall yesterday there was some testimony by plaintiff to the effect that he had conversations with certain employees of Standard and that these

employees had told the plaintiff during the period 1955 and '56 that Standard did not have a program of price assistance to its dealers. That testimony was admitted over the objections of the defendant.

Counsel for plaintiff—there was some surprise that there was an issue, that we made no issue over the question whether there was price assistance, and counsel for the defendants stated for the record that we had never contended that there was no price assistance program, and I would like to state for the record, Your Honor, that last July, in early July, under the affidavit of John M. McDonald, which was signed on the 1st day of July, defendant filed an interrogatory No. 2; answer to Interrogatory No. 2 to plaintiff's third set of interrogatories, and I would like to read that [1293] for the record.

Interrogatory subparagraph A reads: "Under what circumstances you assisted Chevron dealers during period of depressed retail prices from 1955 through 1958?" The answer: "When retail prices in a given locality decreased to a significant extent, Standard extended a temporary price allowance to all Chevron dealers alike within the locality affected."

And then (b) inquires: "Did you attempt in any way to see that they received a margin of some sort for the sale of their products?"

The answer: "Not a specific margin. During the period March, 1955, to December, 1957, when retail prices in a given locality charged by Chevron dealers' competitors decreased significantly below the prevailing retail price, a temporary price allowance was extended to all Chevron dealers alike within the locality affected. The allowance depended upon the margin between the prevailing retail price and Standard's posted tank truck price."

Now, Your Honor; so it is a matter of record that Standard has never taken the position in this lawsuit and has stated at the outset that a price assistance program was extended and we would urge, Your Honor, again to recon-



sider the ruling of the admissibility of that testimony and because in our view it can only have the effect of [1294] creating an air of hostility to the jury and prejudice, and we would ask the jury to ignore it and it is pertinent to no issue in this lawsuit.

The Court: The defendants' contention No. 5 responding further to Paragraph 2 of plaintiff's contentions—plaintiff's contention 2—now, first of all, defendants' contention 2, responding to paragraph 1 of plaintiff's contention is the unlawful discrimination. Defendant Standard contends that it did not discriminate in price between different purchasers of refined petroleum products of like grade and quantity within the meaning of Section 2a, et cetera.

Now, in order to substantiate plaintiff's contention 1, which in effect is denied by the defendant it is necessary for the plaintiff to prove by evidence that the defendant did unlawfully discriminate in the course of interstate commerce in the sale of its petroleum commodities of like grade and quantity by granting discount allowances, payment, services, facilities and rebates and lower prices to other purchasers.

Well, I don't see how, when you deny that contention you say that the plaintiff shouldn't be permitted to bring forward any evidence which tends to prove that contention.

Mr. MacLaury: Your Honor, my point is this, we have never denied and we have stated positively that we have a [1295] price assistance program to Chevron dealers. It is our position as set up in the contentions that Your Honor has just read that the price assistance never went to the extent that this would cause an actual price discrimination between plaintiff and the Chevron dealers.

Now, there is an issue of fact here as to the depth of that or the extent of the price assistance, but there is no question here before this Court as to whether or not assistance was in fact extended.

The Court: If that be the situation, what does the defendant tender as a stipulation as to subsidies they granted to competitors of Perkins?

Mr. MacLaury: Precisely as stated in our answer to Interrogatory No. 2 of plaintiff's third set, Your Honor, that we did have a price assistance program. There has never been any question, and our main objection is to bringing on testimony that Standard or any employee of Standard at any time denied it, because that creates in the courtroom the air that the employees of Standard lied to the plaintiff, and naturally people don't like liars, and that is going to create some prejudice.

[1298] Mr. Bonyhadi: I think the early denials of certain agents of the defendant as to the existence of the assistance program, while admitted, I think goes in part to the weight of the evidence and may tend to explain, perhaps less than total or complete proof by that matter of weight of the plaintiff in bringing forward with regard to each and every transaction Standard engaged in in the Pacific Northwest —

The Court: You know, an argument like that is just like saying put the harpoon in and then twist it.

Why isn't the harpoon enough? Why do you belabor your record over the objection of counsel when he has confessed it to you? That is the point.

Mr. Bonyhadi: I don't want to belabor it. I think any conversations that may have taken place between a [1299] responsible officer of Standard and a responsible plaintiff, forgetting now if it was Mr. Perkins himself or Perkins Oil of California—

Mr. Tilbury: Of Washington.

Mr. Bonyhadi: Relating to price subsidy during the period of the time of the contract would be relevant even though admitted now. I don't know if—we are not trying to prove malice obviously. This is a case whether either Standard violated the Act or didn't—

The Court: If you had intention violation involved, it would be highly pertinent.

Mr. MacLaury: As a practical question, there is no question in my mind when the jury goes out and determines the extent of the damages they determine the character of the defendant in a case like this and that is where the real damage can come.

The Court: I think possibly it is evidence that is error to have gone to the jury. I don't think it is reversible error or prejudicial error, but I think it is error and it doesn't help the plaintiff's case one iota—

[1311] The Court: Ladies and gentlemen of the jury, yesterday while Mr. Perkins was on the stand, there was some testimony given by Mr. Perkins concerning conversations, his version of conversations, had between himself and certain officers of the defendant Standard Oil Company; particularly, testimony to the effect that in these conversations, the officers, at times, the gentlemen named, denied that Standard Oil Company was giving any subsidy or price assistance to any of its marketers of its products. It is a matter of record in pretrial procedures and in the contentions of the pretrial order that the Standard Oil Company acknowledges that they did during period give certain price assistance and subsidies to various marketers of its products. That will be more specifically explained to you as a matter of record as the trial progresses.

Therefore, this oral testimony of Mr. Perkins concerning [1312] negative statements made by these gentlemen that he testified about tends to neither prove nor disprove any issue of fact that will ultimately be before you. It is stricken from the record. Disregard it at this time.

By Mr. Tilbury:

Q. Mr. Perkins, without trying to go over any of the ground that we went over yesterday or any time else, I will ask you, I believe you were indicating something about the Centralia area when we closed yesterday. I believe

you indicated that there were some price disturbances. Now, correct me if I am not stating this correctly. Were there some price disturbances in the Centralia area during our claim period? A. Yes, sir.

Q. All right. Now, Mr. Perkins, would you tell me what you did personally as a result of this, if it happened?

The Witness: This was—I have in mind now the spring of 19—early in 1955. I went to Centralia in response to a call and made a—with by manager there, made a price survey of the territory, of the different stations. And I [1313] found a very depressed market, with price signs, and I instructed our manager there to lower his price to meet the price of Signal Oil Company and of Signal Gas and Oil Company.

Q. (By Mr. Tilbury) I believe you used the term Signal Gas and Oil. Is that the correct name of the company? A. Signal Oil and Gas.

Q. All right. A. And Signal Oil.

Q. What, if anything, did you do as a result of this, besides making this survey in the Centralia area? A. We reduced our price to the operator there.

[1314] Q. (By Mr. Tilbury) Well, what was done—well, all right. Would you comply with the term? What do you mean by the term “we” in this instance? A. That account there was served by the Perkins Oil Company of Washington, which I was President of. And I instructed him to reduce his price and that we would reduce our price to him.

The Witness: That the Perkins Oil Company of Washington would reduce the price that we were charging him too so that he could meet the competition.

Q. (By Mr. Tilbury) Now—

Q. (By Mr. Tilbury) Who instructed him? Who in your organization instructed him to lower his price? A. I did personally.

[1315] Q. All right. Now, did you own the property there yourself? A. I did.

Mr. Hilliard: Your Honor, may I ask the witness a question or two on voir dire in aid of a motion?

The Court: You may.

Mr. Hilliard: All right. Now, it is a fact that you had no right—to your knowledge, you had no right or authority by law or otherwise to control the prices of Mr. Helgeson?

The Witness: I had no right to control the price of Mr. Helgeson—

Mr. Hilliard: Did you then in violation—

Mr. Tilbury: I object to counsel interrupting.

The Witness: —except in this way: That in our contract with the Standard, they reserved the right to control the price, and we had authority to meet—to meet [1316] competitive prices.

Mr. Hilliard: All right. Now, your instructions to Mr. Helgeson were to reduce his price?

The Witness: I told him that he could reduce his price, that we would reduce ours to him.

Mr. Hilliard: Well, now, Mr. Perkins, that was why I asked you. I want to understand. Did you tell Mr. Helgeson to reduce his price?

The Witness: I didn't force him to, nor did I tell him that he had to positively. I reduced—I reduced our price to him. He had made requests to reduce the price, and I agreed to it.

Q. (By Mr. Tilbury) Mr. Perkins, I will call your attention to Exhibit No. 2.

Mr. Tilbury: If that might be shown to the witness, which is the 1953 contract, I believe.

(Clerk hands witness exhibit.)



[1317] Q. (By Mr. Tilbury) Is that the 1953 contract between yourself and the Standard Oil Company of California? A. Yes, it is.

Q. Now, Mr. Perkins, I will ask, if you will, please, to turn to page 2 of that contract. Down in the last paragraph, which is paragraph number 9, would you read to the jury, please, that portion of that contract, paragraph 9.

A. You want me to read it?

Q. Yes, sir, please. A. "Products consigned hereunder shall be posted and sold by the consignee at the price posted or authorized by the Standard at the time and place of sale for the same or similar products and particular type of delivery, quantity, and class of sale involve."

[1318] Mr. Tilbury: All right. I would offer in evidence Exhibits 167 and 168. This is an amendment letter, I believe, to the 1953 agreement.

(Whereupon Plaintiff's Exhibits Nos. 167 and 168, Amendment Letters Dated August 8, 1955, were received in evidence.)

Q. (By Mr. Tilbury) All right. Now, Mr. Perkins, would you please turn to Exhibit 167 and read the contents of that exhibit for the jury, please. A. Read the whole letter?

Q. Yes. It is not too lengthy. A. The letter was headed by the Standard Oil Company, Portland, Oregon, August 8, 1955, to Lee G. Powell, Clyde A. Perkins, Harris Distributing Company, Harris Oil Company. 3756 N. E. Alameda Street, Portland, Oregon: "Reference is made to the consignment agreement between us dated April the 6th, 1958, as amended from time to time and more particularly to paragraph 5 of the amended letter thereof [1319] dated"—"dated, which authorizes you to sell stove and furnace oil to your heating oil distributors at the same prices as we would sell such products to our heating oil distributors.

"On obtaining prior approval from us, you may, in specific instances, sell furnace oil and stove oil to your heating oil distributors at two cents per gallon below the price we charge our heating oil distributors, selling such products under"—it is in parenthesis—"heating oil distributors selling such products under our brand name for the applicable product involved when in our opinion competitive conditions warrant such lower prices.

"Please signify your receipt of the foregoing by signing in the place provided below.

"Yours very truly, Standard Oil Company of California, by E. V. Burns. Signed, Lee G. Powell, C. A. Perkins, G. A. Harris, and Harris Oil Company by G. A. Harris.

[1320] Q. (By Mr. Tilbury) Would you identify Mr. Burns for us, please? A. Mr. Burns was the regional manager for the Oregon Division of the Standard Oil Company.

Q. All right, now, Mr. Perkins, I will hand you, or ask the bailiff to hand you, if you will, Exhibit No. 168.

(Whereupon the bailiff handed the document to the witness.)

Q. I would invite your attention to page 2, Paragraph 5 of that agreement.

First, will you give us the—well, this one has been received, too, I gather.

What is the date of that letter? A. August the 8th, 1955.

Q. To whom is it addressed? A. Lee G. Powell, Clyde A. Perkins, Harris Distributing Company, Harris Oil Company.

Q. Who wrote the letter? A. It is wrote by somebody in the Standard Oil Company, signed by E. V. Burns.

Q. That is the same Mr. Burns you identified for us in the last letter? A. Yes, sir.

Q. Would you please turn to page 2 and paragraph 5 in the middle of that page. Would you read for us the [1321] contents of paragraph 5? A. "Pursuant to the pro-

visions of paragraph 9 of the said consignment agreement, we hereby authorize you to sell, consigned stove oil and diesel furnace oils to your heating oil distributors at net prices not less than the net prices charged by us to our own heating oil distributors selling such products under our brand names. We shall keep you advised from time to time of any such schedule of prices to our heating oil distributors. If you fail to conform to this authorization, we shall in addition to any other rights have the right upon written notice given by us to you refuse each of the additional adjustments set forth in the paragraph 1 for stove oil and diesel oil by five-tenths of a cent per gallon."

Q. All right now, Mr. Perkins, would you tell me the way in which this agreement was carried out, to what extent were prices—how were prices set, we will say, in those stations where you obtained the products from Standard and they eventually reached the station? A. How were they set?

Q. Yes.

[1322] A. We had a general agreement on that. Standard gave us the authority in all of our stations to sell gasoline, that is our private brand gasoline, at not less than two cents per gallon below theirs, below their price at their Standard Oil stations.

Q. Now, would that include Chevron station?

[1323] Mr. Hilliard: Your Honor, this goes beyond what I thought the question was calling for. Now, it is bringing in some oral—apparently oral modification of the agreement. I gather if it was by agreement with Standard, it is contained in either the 1953 or the 1956 agreement.

The Court: I don't know from the witness' testimony on that.

Mr. Hilliard: I will object to the evidence.

The Court: Until that is developed—

Mr. Tilbury: How was this agreement—

Mr. Hilliard: Our objection is overruled?

The Court: For the moment, yes.

Q. (By Mr. Tilbury) Was this agreement in writing? How was it reached that you just testified to? A. That was. That deal was originated in 1945 orally.

Mr. Hilliard: I renew my objection, Your Honor, oral evidence. The two agreements between the parties covering the period of this lawsuit have now been received in evidence.

The Court: That would tend to go as to the application placed upon the contract by the parties, that being the theory. It will stay in the record.

Mr. Hilliard: As long as we understand, Your Honor, I understand he is claiming a separate oral agreement, some other oral agreement.

[1324] The Court: As I understand it, this is what he did and that is what the prices were that were charged. That is what he is telling the jury.

I will leave it in the record.

Q. (By Mr. Tilbury) Mr. Perkins, who were the participants in this oral discussion you referred to? A. Mr. Hargens, Mr. McClanahan, Mr. Cuyler, Mr. Robert Harris, Mr. Lee Powell, and myself.

Q. Where did it take place? A. In the Standard Oil office in San Francisco.

Q. Could you identify that with reference to the signing of the first agreement between yourself and the Standard Oil Company? A. By the signing of the first agreement?

Q. Yes, was it— A. What led up to that?

Q. No, I am not asking that. I am merely asking, can you identify the time of this discussion that you have testified to with reference to the signing or the preparation or the negotiation of the 1945 agreement? A. Yes, I can identify that. That was during the time of the negotiation.

Mr. Hilliard: I renew the objection and move to strike all of the testimony with reference to prior oral agreements. That would be merged in the written document.

[1325] The Court: I am somewhat at a loss. It is the



defendant's position that this testimony tends to impeach some term of the agreement or do I understand this to be something supplemental, in addition to that?

Mr. Hilliard: As we understand it, from the testimony, and this is all we know about it is from the testimony, it is a prior oral agreement which would be merged into writing, and so the written documents would speak for themselves and the written documents governing this period of the lawsuit have been received in evidence.

The Court: Well, I don't take it that the plaintiff contends that there was any modification of any of the terms of the agreement. This was just the application.

Mr. Tilbury: That is true.

The Court: That was made by the parties in the performance of the agreement.

Mr. Hilliard: He didn't say that, Your Honor. He said it was a prior oral agreement.

The Court: That is the construction I am going to leave on it at the moment until I am better advised.

Q. (By Mr. Tilbury) Mr. Perkins, was there any later reference to this two cent differential you referred to? A. Yes, there were many references to it at many times. We were always permitted to sell—I say myself or the Perkins Oil Company of Oregon or Perkins Oil Company of [1326] Washington—we were always permitted to sell not less than two cents below the Standard Oil's price and should we get below, should any of our dealers get out of line and sell for less than that, we were immediately informed of it and instructed to change it.

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Q. (By Mr. Tilbury) Instructed to change what? A. To move it back up to the not less than two cents below the Standard Oil.

Q. All right now, Mr. Perkins, as far as the way this was carried out, were there situations when the difference between—I mean the selling price in the Champion stations



was closer than two cents to the Standard price or Chevron price? A. Oh, yes, when the price wars came on or the depressed market, we were unable to stay two cents below. Many times we had to even sell at the same price they were, and sometimes at a higher price.

. . . . .

[1340] Q. (By Mr. Tilbury) All right. Mr. Perkins—well, let me ask you this: Did the price disturbances in the Centralia [1341] area, were they of short or long duration or what was the fact?

Mr. Hilliard: May we have a time specification?

Q. (By Mr. Tilbury) During the claim period, 1955 through '58, which I thought I was trying to limit all these questions to that area. A. In 1955 and 1956 and 1957, there was continuous price disturbances in Centralia.

Q. All right. Did it go up and down to some extent, I mean, or was it always the same level or what was the fact? A. Well, it would be various. The price would go way down, and then it would come back a ways, and then it would go down, and it would keep breaking out all the time.

. . . . .

[1356] Q. (By Mr. Tilbury) Mr. Perkins, I will go to another area, if you don't mind. I would like to ask you with respect to the way in which or payment was made for the products that you obtained and were invoiced by Standard Oil Company; could you tell us how payment was made for those products?

. . . . .

[1357] A. Well, the papers were made from our office to the Standard Oil Company, and they were paid weekly. We paid cash for everything that we had bought the week before. I think the break-off date started on Friday, I believe, and all the merchandise that we had purchased up to that time we paid cash for it.

Q. (By Mr. Tilbury) Was it always paid by cash, check, whatever the case may be? A. Well, check. We consider that cash.

Q. All right. It was not carried forward from one week to the next? A. Never. Never.

[1358] Q. And who was billed, which entity in your organization was billed; who got the— A. I personally was billed.

Q. Was this true throughout the entire period? A. Throughout the entire period.

[1364] Q. (By Mr. Tilbury) Mr. Perkins, without going into all the chemistry in this industry, do petroleum products that have a tendency to be left alone always remain in the same quantity or will it change upwards or downwards? A. Gasoline will evaporate as time goes on.

Q. Could you give us some indication as to how much evaporation, without getting too technical? A. There seems to be a general rule on that that is [1365] accepted by the States. It's a half of one percent a month.

Mr. Hilliard: Your Honor, we would object and move to strike the testimony, because evaporation is not an issue in this case.

Mr. Tilbury: It is an issue.

The Court: It will be overruled.

Q. (By Mr. Tilbury) All right. Mr. Perkins, now, can you tell me, were you given credit by Standard for any—you personally, for any products that evaporated which you obtained from Standard after you received the products from their terminal? A. Never.

Mr. Hilliard: May I ask a question in aid of an objection, Your Honor?

The Court: You may.

Mr. Hilliard: Did you measure and submit claims for evaporation from the time that you received the products until you delivered to the corporation?

The Witness: No, sir.

Mr. Hilliard: You never then had any measurement of evaporation which you submitted to Standard Oil Company?

The Witness: No, sir.

Mr. Hilliard: I would move to strike the answer, Your Honor.

[1366] The Court: It will be denied.

[1373] Q. Were there situations in those cases where you obtained products from Standard that the products were stolen— A. Yes.

Q. —by theft? Can you give us a specific illustration where this was the case? A. Yes. We had a large theft from a former manager that worked for us in Aberdeen, stoled—I say stoled—he was convicted and sent to the penitentiary.

Mr. MacLaury: Your Honor—

The Witness: In excess, I believe, of 100,000 gallons.

Q. (By Mr. Tilbury) When did this happen?

Mr. Hilliard: Your Honor, I object to this, because in his answer he has said “us”, and there has been no [1374] specification of what product he stole.

The Court: Well, we will depend upon him to supply it.

Q. (By Mr. Tilbury) Aberdeen, was that a station that was leased to Perkins Oil Company of Washington, if you recall? A. Yes.

[1375] Mr. Tilbury: All right.

Mr. Hilliard: We object to this, Your Honor. This is a product then in the possession of Perkins Oil Company of Washington and not this plaintiff and there is no claim of that claim properly before us.

The Court: It will be overruled.

Q. (By Mr. Tilbury) Was this a station, in this instance, of the Standard Oil Company that was sold to C. A. Perkins individually? A. Yes.

Q. Now, with respect to the 100,000 gallons or whatever the exact amount was, was your billing to Standard ad-

justed or change or modified because of the fact that some of the product had been stolen, as you have testified?

Mr. Hilliard: Same objection, not his product.

The Court: There is one element that I am certain the jury would be concerned about and that would be the time of this claimed loss product with reference to the time of Mr. Perkins' payment for it. It would have to be supplied before it would have any relevancy to it.

Mr. Tilbury: All right.

Q. (By Mr. Tilbury) Could you identify the time of this theft in terms of the time that you obtained the products from Standard? Could you identify it that way? A. The product wasn't all stolen at one time. They were [1376] stole over a period of time and we paid for our products in the regular manner every Monday, we paid for the products that we purchased from Standard the week before, and he didn't take them all at one time. He would take two or three thousand, or four thousand gallons at a time and so it drifted along over quite a period of time.

Q. Did Standard give you, or for that matter, did Standard give the Perkins Oil Company of Washington any credit or adjustment or change your billing as a result of this theft that you have described in Aberdeen?

Mr. Hilliard: Objection, Your Honor, because the theft has not been specified in terms—

The Court: I will have to leave it to the jury to consider in light of all of the evidence.

The Witness: They did not give me any credit.

Q. (By Mr. Tilbury) Can you identify the time of that theft, the approximate date when this came to light? A. Well, it went over quite a period of time. '55, and I think it ran into '56.

Mr. Hilliard: May I ask a question in aid of an objection?

The Court: You may.

Mr. Hilliard: Mr. Perkins, did you submit a claim to Standard for this theft?

The Witness: No.

[1377] Mr. Hilliard: Did any one on behalf of the Perkins Oil Company of Washington submit a claim?

The Witness: No, sir.

Mr. Hilliard: I move to strike that again, Your Honor, a hypothetical situation, no claim having been made.

The Court: There is this much about it, members of the jury, if this be a situation and an incident at which the Standard Oil Company never heard of, there is nothing about it that they could be concerned with in any event.

You will have to determine from all of the evidence before you whether or not Standard Oil Company received any information concerning this incident or incidents with reference to the loss, and then in view of all the evidence and the ultimate instructions given to by the Court, you can determine whether or not that tends to bind Standard Oil in any of the claims.

Keep your minds open about it.

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[1437] Q. All right, now, Mr. Perkins, could you define for us what is meant by the term "stop prices?" A. A stop price in a contract?

Q. Yes. A. A stop price is a figure that is used when a company selling merchandise to another company reserves the right to stop deliveries or stop making sales to them when the [1438] price reaches that figure or less.

Q. Are these important in the industry?

Mr. Hilliard: Your Honor, I object on the grounds there is no issue of stop price in this case. I don't know if counsel plans to tie this in to something, but I don't know, it is not a contention in the lawsuit or an issue between the parties.

Mr. Tilbury: It is a contention. It has been from the beginning.

The Court: What do you claim for this, Mr. Tilbury?

Mr. Tilbury: Well, Your Honor, this stop price was a matter that put a definite floor under this operation. He could not go below these with negotiation with his customers. It is our position this became important because



other customers received stop prices that were set at lower levels.

The Court: I think that is all you need to show.

Mr. Tilbury: Well, all right.

Q. (By Mr. Tilbury) Mr. Perkins, so the record will be clear, without going into any of the other aspects, do you recall whether during the period of your relationship with Standard a level was reached which was down to the stop price level? A. I don't believe—I don't believe it ever did.

Q. All right, again, working out contracts—

[1439] Mr. Hilliard: I move to strike the reference to stop prices because it is an abstract question.

Mr. Tilbury: It is not abstract.

The Court: Now, the picture is completed; it shows that it doesn't apply at all, so there is no misunderstanding about it.

Q. Can you tell me, Mr. Perkins, during the period that you were under—well, let's take during the period of this lawsuit so we don't get too far afield—was it necessary to paint your stations from time to time, retail stations that you owned? A. Oh, yes.

Q. Did you receive any allowance from the Standard Oil Company for that painting? A. Oh, no.

Q. Of any type? A. No.

Q. Do you know whether they in those situations where you supplied gas to other people as distinguished from a [1440] situation from where you owned the station, do you know if Standard in those instances paid that customer anything for his painting? A. Not to my knowledge.

Mr. Hilliard: I object to this because, as I understand the witness, at the most he would claim he only operated one station at Astoria for a period of time and certainly there is no issue in this case placing an obligation on Standard to paint stations of a corporation's customers. I don't think there has been any contention that we have—

Q. (By Mr. Tilbury) Mr. Perkins, did your station, that is, those where you owned the station, did they receive anything in the nature of a restroom allowance from the Standard Oil of California? [1441] A. No, sir.

Q. (By Mr. Tilbury) On the Champion stations which you owned, did they use the Standard credit cards? A. No, sir.

Q. Did you have any sort of discussion with the Standard officials regarding these credit cards? A. I did at one time.

Q. And when did this occur? A. After Regal came in the picture and were taking all credit cards, I discussed with them about me taking all credit cards.

Q. With whom did you discuss that? A. Mr. McClanahan.

Mr. Hilliard: May I make an inquiry. This would not seem relevant to any issue, and I am asking now if the charge is being made that someone else used Standard credit [1442] cards and Standard processed that service and wouldn't do it for Mr. Perkins?

The Court: There is evidence in the case that the plaintiff contends that at least there is that inference, the advertising of Regal.

Mr. Hilliard: May I ask a question or two on voir dire?

The Court: You may.

Mr. Hilliard: The evidence that I have heard, Mr. Perkins, is that Regal had a sign, "All major credit cards honored." Is that what you are talking about?

The Witness: Yes.

Mr. Hilliard: Now, there are many other rebrand stations during that period and minor brands that would post that same sign, wasn't there, that all major brand credit cards honored?

The Witness: I never knew of any other posting that sign.

Mr. Hilliard: So there will be no confusion or misleading here, you know that all that means is that if I drive into the

station with a major brand credit card where that advertisement is contained that that individual station will take a risk on me for personal credit? In other words, they will extend me credit because I am carrying a major brand credit card?

The Witness: That is right.

[1443] Mr. Hilliard: That could be Standard or Shell or Texaco or any of the major brand stations?

The Witness: That is right.

Mr. Hilliard: And you could do the same thing yourself at any retail location if you wanted to put the sign up there and say you honored major credit cards?

The Witness: That is exactly what we wanted to do but we were not permitted to do it.

Mr. Hilliard: Any provision in your contract on that subject?

The Witness: Any provision in the contract that we could not do that?

Mr. Hilliard: Or that you could, was it a subject of that contract of '53?

The Witness: No, it wasn't, because I never heard of a thing like that before at the time the contract was wrote.

Mr. Hilliard: You have seen that sign many times on many stations, haven't you?

The Witness: Well, I have lately, but I never seen it until the Regal came here. I never knew of anybody ever doing that.

Mr. Hilliard: And the reason you didn't want it is that it has always been your position, has it not—to any dealer of yours, that if the customer didn't have the price, cash price, for a gallon of gasoline, he shouldn't be [1444] driving a car, hasn't that been your position on it?

[1452] Mr. Hilliard: Your Honor, may I object to the form of that question because of "contract level". I don't understand what we are talking about.

The Court: I suppose he means the actual billing price.

Mr. Tilbury: Yes, and that related to it; and I have particular reference, Mr. Hilliard, to some of these amendment letters which have already been received in evidence such as those starting with Exhibit No. 170 and going through 203 and the like, those type of adjustments.

Mr. Hilliard: My point is I don't know whether he is talking about discount.

The Court: I think we are on an even keel.

Q. (By Mr. Tilbury) Now, were some of these adjustments, were there some adjustments that were given from time to time by Standard? A. To me?

Q. Yes. A. Yes, sir.

[1453] Q. All right. Now, were they different types; in other words, are there some that are long-term and some that are short-term? A. They would all begin with what we call a day-to-day.

Q. Would you explain what that is for us, please? A. Well, they would give me a letter saying that a day-to-day allowance is that you would receive a tenth of a cent more discount from day to day. It can be withdrawn any day that they want to. That is a day-to-day. A few was firmed up to last to the end of the contract period.

[1465] Cross-examination

By Mr. Hilliard:

[1467] Q. All right. Now, directing your attention to the question relating to a little of the background of this relationship with Standard which you have covered in your direct testimony, in 1945, as the evidence now shows, you and Powell and Harris entered into the agreement, the 1945 agreement, we will call it, with Standard Oil Company for a supply of gasoline? A. Yes, sir.

Q. Now, as I understand it, also, prior to that time, with the war on, there had been a real scarcity of gasoline? A. Yes, sir.

Q. Is that true? A. Yes, sir.

Q. And then by the end of World War II your business had dwindled to almost nothing because of the amount of gasoline the government would allow you, the small amount the government would allow you? A. It had dwindled away down.

Q. And resulted in the closure of your stations which you later reopened, is that right? A. I don't know that we closed any stations. We had enough gas in the stations and we would give them an [1468] allotment of so many gallons each day, and, when they would sell that, why, they would close up for the balance of the day, or if it was only delivered twice a week, they could sell it out if they wanted to and then close up until they got another shipment. I suppose some of the operators did it one way and some the other.

Q. Well, I will ask you if this refreshes your memory, referring to your testimony in 331-59, page 59:

"Now then we started in, you see, our business had for a couple of years dwindled down to almost nothing because the amount of gasoline that the government would allow us to have is very small so then we worked hard to reopen our stations and to get our plants and everything going."

So you had closed down stations which it was necessary to try to get reopened? A. Might have closed some of them up entirely. I just don't recall now, but that could have been possible, yes.

Q. And then you had anticipated gas would get extremely plentiful after World War II, but instead of after World War II gasoline got very tight on the market, is that true? A. Yes.

Q. That continued, that tightness, and the availability of gasoline until after the Korean War, is that right? A. Well, the gasoline loosened up after World War II and [1469] we had a fair amount, not as much as we needed by



far, but during the—I think from about '47 to '51 it was quite tight.

Q. That would be taking us then to a period after the Korean War? A. Yes, '52 or '53, something like that.

Q. And then, of course, after that point the availability of gasoline was better; in other words, there was more gasoline available? A. Yes, sir.

[1485] Q. Can you tell me the motive at the time of this incorporation in your son executing a notarized statement reciting that you and he had previously conducted a co-partnership under the name of the Perkins Oil Company?

[1486] A. No, I can't, Mr. Hilliard, I didn't draw any of these papers. Our attorneys drew the whole thing and built up the whole thing; in fact, I would have to read all the papers even to know what is in all of them. But I can truthfully tell you that he was not a partner in any way, shape or form in my business.

Q. You know, of course, that just recently in this very trial the last few days your counsel put this in evidence on your behalf? A. I can't help what my counsel done, I am telling you the facts. It was our intentions, had been since he was a boy, to eventually he would take over all the business.

In the meantime our position in our family changed a little bit. We raised an orphan girl and a boy and Marvin Lennington was a nephew which we took into our family and then instead of having one boy in there to share into it, we had to arrange, we wanted to arrange for all of them to have something. And that was the reason that he got a part of the business.

Naturally we look forward for a long time of eventually him owning all of the business.

Q. Can you suggest to me any reason, business reason, or otherwise such a document as this would be executed? A. I don't understand why Mr. Snider used that language. I don't have the slightest idea.

[1487] Q. Do you understand why your son signed it?  
A. No, he probably signed it because his attorney told him to.

Q. I see. A. That is the reason he would sign it. He signed all of these papers; we signed them all when they were handed to us. In fact, Mr. Snider knew as much about our business practically as we did. He took care of my business for a number of years. He didn't know about the inside workings but the general ideas, we talked everything over with him.

Q. Did you look at this document before it was signed?  
A. I don't know as I ever did look at that document and I don't know as I had ever seen it until recently.

Q. So you— A. (Interposing) Does Allen claim now that he was a partner in my business?

Q. You have his notarized statement in front of you. Doesn't that read as though he claims he was a partner?  
A. Well, you might have called it a partner if you wanted to. He didn't own any part of the business at all. He shared in the profits of the business. That is exactly the way it was. My whole family worked in the business, everyone of us. My wife, my boy, and my nephew, and the two kids that we raised, and they all worked in the business.

Q. This Exhibit 424 I think you have testified about [1488] before, do you have that in your hands? It is a lease from yourself and Elizabeth Perkins to the Perkins Oil Company of Oregon. That covers, directing your attention to the second and third pages, four different—that covers four different pieces of property, is that right? A. Yes, four pieces of property.

Q. And that document is dated, the 1st day of December, 1952, signed by yourself and Elizabeth Perkins, parties of the first part? A. That is correct.

Q. And the Perkins Oil Company of Oregon, Inc., by W. M. Lennington, party of the second part? A. Yes, sir, that is right.

Q. Now, directing your attention to Exhibit 425 received in evidence, it has the caption, "Assignment," and recites,

"Whereas, C. A. and Elizabeth Perkins, husband and wife, parties of the first part, hold leases as more particularly hereinafter referred to and whereas said parties of the first part are conveying to the Perkins Oil Company of Oregon interest in oil business heretofore conducted by the parties of the first part as part interest in a partnership and now desire that all of said leases be transferred to said corporation," and then the transfer is recited, and is dated, "this 1st day of December, 1952," and signed "Clyde Perkins and Elizabeth Perkins, parties of the first part, [1489] Perkins Oil Company of Oregon, Inc., W. M. Lennington."

Now, that recitation in the second paragraph that you are transferring your interest—strike that. Let me read this again.

"Parties of the first part are conveying to the Perkins Oil Company of Oregon interest in oil business heretofore conducted by parties of the first part as part interest in a partnership." You signed this document now so you must have read that before you signed it? A. Yes, I know this document.

Q. And that recites that this property was part interest in an oil company partnership; isn't that the same partnership that is referred to by your son, Allen, in his bill of sale? A. Well, the partnership, if it was, if you might want to call it that or they might want to call it that, but we both had an interest in the profits which was built up in the company and I agreed to leave all of the profits that I had in the company to finance it and I assigned over to them my interest in the company, which was the 54 per cent that I had of the cash reserve in the company to them. Now, that is all that I signed over to them and any interest that I had in merchandise, the merchandise that I had and the equipment to the corporation.

Q. Well then, you prefaced that statement, Mr. Perkins, [1490] that I could call it a partnership if I wanted to. So the jury will understand, the document I am reading is

one signed by you where you call it a partnership, that is true, is it not? A. Mr. Hilliard, there was no partnership in that business. It was a family operation entirely, a family operation. I suppose I could have said that all of the kids had a partnership interest into it but as a matter of fact they had no interest at all in it except the interest that Allen devoted all of his time to it and he had an interest built up into the company from the residue, from the profit, of which he had not taken out from prior years.

Q. Did you have any special motive or reason for leaving in this description of interest in a partnership? A. Mr. Hilliard, when I signed that, I never gave it the least thought. In fact, I don't even know whether I read it when I signed it or not. It was there, Mr. Snider gave us all of the papers and I signed it.

Q. Mr. Perkins, there was no lawsuit problem at that time where the entity of a partnership or a corporation made any difference, isn't that the fact? A. That is right.

[1520] CLYDE A. PERKINS thereupon resumed the stand as a witness in his own behalf as plaintiff, and, having been previously duly sworn, was examined and testified further as follows:

Cross examination

By Mr. Hilliard:

[1552] Q. And you would still maintain, however, that as far as [1553] the practical operation, you just, in view of this source of income, rental income from the corporations, that you just forgot the corporations after the contract wasn't assigned to them, your contract with Standard?

[1554] A. After our contract wasn't assigned, we were so upset about it we just carried on with the corporation. I don't say we forgot it. We just carried on with our corporations, but as far as our, all of our plans were concerned, they were just forgotten and pushed by the wayside, and,



when Standard refused to recognize the corporation, then it was almost impossible for us to recognize it because I had to stay there and run it as an individual.

[1561] Q. (By Mr. Hilliard) All right. Is the "yes" that you transferred those products to Perkins Oil Company of Oregon and Perkins Oil Company of Washington? A. At the very beginning, yes.

Q. And did you transfer to those two corporations—well, strike that. At the beginning, I am talking about 1955 through 1957. A. From 1955 to 1957, they was supposed to pay me one half a cent a gallon brokerage.

Mr. Hilliard: I object and move to strike, Your Honor. That is not responsive to the question.

The Court: Well, your question is "yes" or "no", did he transfer at a mark-up or something of that nature.

Members of the jury, the witness has been asked to answer "yes" or "no", following which he could give an explanation. So disregard his statement that "they will allow me a certain fraction of a cent per gallon." Disregard it.

[1611] Q. They are not paid to the two dissolved corporations, are they? These two corporations were dissolved in 1962? A. Oh, yes, they were dissolved, yes.

[1637] Q. I asked Mr. Fraser questions about his, the price he paid you for gasoline, and a check of our, a check of your records which we have examined, after having been produced in Court show that through this claim period you sold Mr. Fraser at varying margins to yourself from one and a half cents to two, to sometimes slightly more per gallon on regular gasoline, and—

Mr. Tilbury: Your Honor, I object to counsel testifying. Now, if he wants to ask a question—

The Court: He may ask a leading question.



Mr. Tilbury: I don't object to that. I realize that he has a right to do that on cross examination. For the record, my own position is that I don't think he should give a flat statement. I think it should be in the form of a question.

The Court: Have you finished your question?

Mr. Hilliard: No, your Honor.

The Court: Go ahead and finish it.

Q. (By Mr. Hilliard) All right, to sort of refresh our memory, the record is showing that you sold to Mr. Fraser at [1638] this margin to yourself varying, as I have suggested to you, from a cent and a half to two and a half cents on occasion through the entire period of '55, '56, and '57 now, however, Mr. Fraser testified that you told him you sold gasoline to him during this period at your cost from Standard; now, what would be the basis of your making such a representation to Mr. Fraser?

Q. (By Mr. Hilliard) Did you make that representation to Mr. Fraser? A. If Mr. Fraser said that I did, I probably did. I don't think that he would tell a mistruth.

Q. What was the basis then of your making that representation? [1639] A. Sometimes we did sell to him for just right down what the gasoline cost us.

A. You understand that a cost to us, Mr. Hilliard, if I [1640] buy something for, say, for ten cents and if it cost me to run it through my, through my plant and through my box and through my office another cent and a half or two cents, then my cost is twelve cents.

Q. Did you— A. It isn't the cost that I pay the manufacturer at the point of receipt. It is the cost that I have in the product at the time that he takes it, that the buyer takes it from me. That is my cost, and I am sure that is what he meant.

[1642] Q. Well, as a matter of fact, then you are ready to now acknowledge that you did not sell to him at the price which you paid Standard? A. I acknowledge that I did not sell to him at the price that I paid Standard.

. . . . .

[1704] Q. (By Mr. Hilliard) You have testified, I believe, Mr. [1705] Perkins, that on your best recollection of your observation, Regal opened at 39th and Powell in October of 1956? A. In the late fall of 1956.

Q. Now, directing your attention specifically to the subject of price wars in Portland, it is true, is it not, that as far back as 1953 you had experienced a terrific price war in the Portland area? A. I can't say there was a terrific price war in Portland in 1953. There were brush fires around, what we term in the oil industry as brush fires where there would be a price war that would last for a few days or a week. Maybe it would last longer, and it would affect certain areas. I can't remember now in '53 what areas it affected.

Q. Let me direct your attention to your testimony in the case we tried here this fall, 331-59, sometimes referred to as the Yakima case. Your transcript on page 620, in response to questioning by Mr. Tilbury, your counsel, on line 6. Your statement: "'53 was—I can't tell you about the profit picture, but I will tell you that 1953 was a bad year. We had a terrific price war in the Portland-Roseburg-Medford area." Now, is it a fact that in 1953 then in those areas mentioned you had a terrific price war? A. That could have been possible. I don't say that it lasted forever. Those things break out and—and they can be real disastrous for a short time.

[1706] Q. Well, it isn't just possible. It is your statement under oath in Court, isn't it? A. Well, if I said that, that was to the best of my recollection at that time.

Q. All right. How about at this time; do you have the same recollection? A. Well, if I said that, no doubt that's exactly like it was.

. . . . .

Q. Well, how is your remembrance six months later? Is it the same? Do you remember that terrific price war?

A. Well, I know we had different price wars off and on, [1707] small ones, continuously. We've always, ever since I have been in the gasoline business in the last 35 years, we have had these flare-ups. But they didn't—they never lasted very long. Sometimes we would have them, they would last a month. Sometimes they'd only last a few days. Maybe they'd last a little longer.

Q. Mr. Perkins, isn't it a fact that throughout 1955 and '56, prior to Regal, you had depressed—you had a depressed retail gasoline market in this area? Now, isn't that really the truth? A. You said in 1955 and '56?

Q. Yes. A. In 1955 and '56, yes, we did. We had some—we had trouble in '55 and we had trouble in '56. We had some serious trouble in Centralia when the Signal Gas and Oil was selling down there. We had serious trouble in Centralia in 1955 when the price—retail price of gasoline got way down below—got below our tank wagon price.

Q. I am talking about Portland right now. A. Now, then, in the Portland area, I can't tell you how bad it was in 1955. I know we had price disturbances from time to time, but we never in my—in my lifetime in the gasoline business did we ever have a price disturbance like the one that we had after Regal entered the field.

• • • • •  
[1711] Q. (By Mr. Hilliard) Now, I am going to ask you if as an actual fact, Mr. Perkins, prior to May 24th, 1956, that a practice had developed in this city by marketers of gasoline products, of erecting movable signs and placing them at various locations on their premises and adjacent to the sidewalk areas and that the quality of the signs and the placement had been distracting to drivers of motor vehicles; there was poor quality of workmanship and constituted misrepresentation in the eye-catching appeal. That situation on retail price signs existed prior to May 24th, 1956, in the City of Portland, is that not right? A. Well,

this right here is an ordinance that was passed in Portland and I know nothing about the Portland ordinance at all.

Q. You know something about the signs. A. I don't live here or pay any attention to the [1712] ordinances over here because I don't do business in the City of Portland.

Q. You know about the price signs over here because you testified, you have described them. A. Well now, this right here is about removable signs sitting on the sidewalk.

Q. Now, you haven't answered my question yet, Mr. Perkins. A. Did you ask me a question?

Q. Yes. A. I am sorry.

Q. If there wasn't a very extensive use of these curb and sidewalk signs prior to May of 1956 in the City of Portland, to your personal knowledge? A. Mr. Hilliard, to my personal knowledge there was no relation between the amount of signs when this ordinance was drawn in May, the 24th, 1956, that there were on January the 1st, 1957.

Q. Mr. Perkins, I will ask you once more, prior to May of 1956 the practice had developed in the City of Portland of placing these curb signs in the area of retail establishments that constituted actually the eye-catching misrepresentation to the traveling public, and that was the condition in Portland prior to May of 1956? A. Well,—

Q. Do you agree with that, Mr. Perkins? [1713] A. No, I don't agree with it at all, because there have always been some price signs over here, not many. There have been odd signs, "We sell for less," or "A better deal here," or something like that, and they wouldn't be very attractive signs, I will agree with you on that, and if I remember right, all of the dealers got together and proposed this ordinance that they take—

Mr. Hilliard: I move—

The Witness: (Interposing)—that they take the signs down. The signs were sitting out on the curbs, and of course the City didn't want the signs on the curbs.

. . . . .

## [1787] Redirect Examination

By Mr. Tilbury:

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[1911] Q. All right. Now, as far as—well, let me first ask you about that. Now, as far as Marine Terminals in Oregon or Washington during the period of our claim period, were there any terminals that were owned by any petroleum company other than a major, with the exception of the Time at Tacoma or Portland?

Mr. Hilliard: I object, Your Honor.

Q. (By Mr. Tilbury) If any?

[1912] Mr. Hilliard: There is no foundation to the question and no showing of any basis for knowledge of the ownership of the property.

The Court: Didn't he testify as to experience about developing a marine—

Mr. Tilbury: Yes, sir, he did.

The Court: Yes, he did.

Mr. Tilbury: His own.

Q. (By Mr. Tilbury) Are there any—

Mr. Hilliard: This is 1945, Your Honor.

• • • • •

[1913] The Witness: The Time Oil Company had a terminal here, and that's the only independent terminal in the northwest.

Mr. Hilliard: I move to strike, Your Honor; as irrelevant, immaterial and incompetent.

The Court: It will be overruled.

Q. (By Mr. Tilbury) Are there any independent refineries as such in the northwest? A. The Time Oil has a small refinery that makes only house brand gasoline in Tacoma, Washington.

Q. Are there any pipelines that come into this area? A. There is no pipelines.

Q. By independents is what I was referring to. A. By anybody, except—I'm speaking of the claim period.



Q. Yes, sir. A. There are one now, an Intrastate pipeline from Portland down, I believe, as far as Salem or Eugene.

Q. Is there one at Pasco? A. There is one to Pasco.

Mr. MacLaury: Is this within the claim period again now or not?

Mr. Tilbury: Well, I think so. I will ask him to be sure. I am not certain.

Q. (By Mr. Tilbury) Was there a pipeline in Pasco during the claim period? [1914] A. Yes, sir.

Q. Who owned that?

Mr. MacLaury: May we have a foundation as to his knowledge, Your Honor, before the witness answers? The source of his knowledge.

The Court: Yes, you may.

Mr. Tilbury: Go ahead.

Mr. Hilliard: Mr. Perkins, did you use pipeline in Pasco?

The Witness: No, sir.

Mr. Hilliard: Do you have any official connection with any entity that owns or operates that pipeline; that is, as an employee or an officer?

The Witness: Did you say that owns it or an employee?

Mr. Hilliard: That owns it. Are you an employee or an officer of the company or representative of the individual that owns the pipeline?

The Witness: No, sir.

. . . . .  
[1915] Q. (By Mr. Tilbury) Mr. Perkins, to your own personal [1916] knowledge, do you know of any situations where gasoline, either Ethyl or regular gasoline, has been brought into this area from points—and by this area, I now mean Portland or Vancouver—from points in California? By regular truck is what I am speaking of or tank truck and trailer. Not marine, but by— A. Truck and trailer?

Q. Yes. A. I know of no such instance.

[1917] Q. (By Mr. Tilbury) Now, do you know of any situations where gasoline has been brought into this area,

northern part of Oregon, Southern Washington, by means of rail transportation?

The Witness: I know of none.

Q. (By Mr. Tilbury) Is the normal way in which products come in by tanker; is the way most of the products come in? A. This is the way they all come in.

Q. Does the Standard Oil Company operate tankers, to your knowledge? A. Yes, sir.

[1918] Q. (By Mr. Tilbury) Have you personally observed tankers which bore the insignia of any other major oil company during the claim period? A. Yes, sir, I have.

Q. And have you seen the insignia of an independent company—

Mr. MacLaury: I object to the form of the question, Your Honor. It is speculative, an insignia on the tanker.

The Court: Well, it does pinpoint one type of vessel on the river from another type, but it doesn't suggest to him that it is an oil company vessel other than one of the Maru Japanese lines.

He can tell us what he saw.

Q. (By Mr. Tilbury) Do you recall seeing the insignia of any independent tankers on any of the ones you personally observed during the claim period? A. No independents that I know of bring any gasoline in and I never seen any.

Q. All right. Was there a time, Mr. Perkins, when there were some independent terminals in the area around Portland? A. Oh, yes.

Q. Was there a man by the name of Polsky that had a terminal in this area? A. Yes, sir.

[1919] Q. Did his operation continue or otherwise? A. No, he discontinued business.

Q. Did Sunset have one at one time? A. Yes, sir.

Q. What happened to it, if you know? A. They, the terminal was taken over by the Standard Oil of New York.

Q. Was there a Gage that operated at one time, operated a terminal? Was that the name of the terminal?

Mr. MacLaury: I object to these questions.

The Court: It is a leading question. I don't know how long it will take the witness to go through without some pinpointing.

Mr. MacLaury: It is way outside the scope of the cross-examination.

The Court: Well, he used a name which meant nothing to me. I don't know whether—it all goes to the area of what supply there was within the area and I have ruled that that seemed to be within the line of inquiry on cross-examination. So this is an expansion of it, and I think it would be proper, but I do feel—

Mr. Hilliard: For the record—

The Court: Pardon me?

Mr. Hilliard: I don't believe that I asked anything about supply on cross-examination.

[1920] The Court: You certainly went into the marine ports, where he got his supply.

Mr. Hilliard: No, Your Honor. I just, so the record will be clear and Your Honor not be misguided, so far as my position is concerned I did not make inquiry on those subjects on cross-examination. I merely state that for the record, Your Honor.

The Court: Very well. I am accepting your cross-examination as a whole, as I recall it, and that is what I can make my ruling on.

Q. (By Mr. Tilbury) Mr. Perkins, I don't mean to lead you—were there any other independent terminals; have there been in the last period of years in this area? I don't want to pinpoint the date because I would probably be leading, but have there been any other independent terminals besides that of Mr. Polsky that you mentioned and the one by Sunset? Were there or have there been others, independent terminals I am speaking of? A. No, that is all. That is all I know of, except the George Gage one.

You said during the claim period. He was beyond the claim period.

Q. All-right. He wasn't in operation? A. No, sir.

Q. And that terminal disappeared, did it, or what happened to it? [1921] A. Richfield taken it over.

Q. All right.

Mr. MacLaury: Your Honor, I wonder if this might be a proper time for a recess.

The Court: Yes, it is. I was waiting for a place to break and you made it.

You may take your recess, members of the jury.

(Whereupon the morning recess was taken, and the following proceedings were had out of the presence of the jury:)

The Court: Do you have something for the record?

Mr. MacLaury: Yes, Your Honor. I didn't want to suggest to the Court the reason for the recess. I had a purpose, and I would like to address myself to this last line of questioning. I believe it is highly prejudicial and has nothing to do with this lawsuit. I think counsel is attempting here to show a demise of the independent oil business in the Northwest in a manner that is highly questionable and it is highly prejudicial and has no connection with this lawsuit to ask what happened to that terminal, and Mr. Perkins should answer Richfield took it over—he is painting this picture, without foundation and knowledge of this witness—of major oil companies taking over the industry here in the Northwest. It can have no other effect than to be prejudicial and it is not material to this lawsuit. [1922] If he is attempting to set up the major companies on one hand gobbling up the independents on the other and it has nothing to do with this lawsuit.

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Mr. Tilbury: My only purpose, Your Honor, I think this is highly relevant and I am almost positive that defendant will no doubt move, as they—I would expect them to on a

directed verdict based on the effect I haven't shown an injury to competition or an injury to a competitor or a tendency to monopolize. This is my purpose in attempting to paint the background. We will have an expert witness who will then apply the specific facts. I have not asked him in terms of the statute, which I think I could not do with this witness, but I do think that I have, I must bring this evidence in. I think it is necessary in order to establish the case so the jury can place this in a proper framework. I do not think I am going into anything other than the things that are mandatory and must be brought out if I am to establish my case.

[1923] Mr. MacLaury: That is precisely my point. He is trying to show an injury to competition here as a result of what Union did with Sunset, what Richfield did with this other customer, and all of these other oil companies in this area. The question is, was there an injury to competition as a result of the specific price discrimination charged and not as a result of these various mergers with the other oil companies. That is what I am concerned about.

The Court: The causation is not related at all, that is what bothers me about it.

. . . . .

[1924] Mr. Tilbury: Yes. I am merely attempting to show that during the claim period by this time the alternatives had no longer existed. That this was—

[1925] The Court: That doesn't mean the situation that Standard is going to claim existed in the claim period. Now, that is the point. The Court is not being critical in any statements it is making. It is analyzing what the defendants' position is.

I used the expression the other day somewhat in the vernacular, that why twist the harpoon, not intimating there is any harpoon, and that is what this type of question is.

Mr. Tilbury. Well,—



The Court: It creates something bad in the jury's mind, a bad situation that has got nothing to do with it. In fact, it was Richfield that did the bad thing of taking them over.

Mr. Tilbury: I am not saying that it was Standard Oil Company that took Mr. Gage—

The Court: That is the reason why you get this type of an objection, is because under the claim it is prejudicial, that it creates something evil from the action of the big producers. I am not saying they are getting that reaction from it, I don't know, but I say that it certainly gives ground to complain that it does.

When the jury comes back, I shall, if I can innocuously, tell them to disregard that. That is the only way I know how to protect your record, because it gives them something to holler about.

[1947] Q. (By Mr. Tilbury) In regard to the 1956 contract, would you tell us whether it was discussed at that time? A. It was discussed during the '53 and '56 contract.

Q. All right. Now, what was said?

Mr. Hilliard: I will object, Your Honor, the contracts are in evidence. No ambiguity, no contention of ambiguity, and the contract speaks for itself. Each contract speaks for itself.

The Court: For orientation, what area are you developing?

Mr. Tilbury: The contract uses the language, "Best efforts" on paragraph 7 of both of these contracts, and I am merely asking this witness if Standard identified this term of its contract, that is, whether any explanation was given.

The Court: You may develop that.

[1948] Mr. Hilliard: We have an objection overruled on that?

The Court: Right.

The Witness: Well, I won't tell you about all that led up to the conversations but the essence of this, I said to them, "How do you expect me to sell all of this gasoline that I have contracted for and to fulfill this contract when you won't let me take on this account or that account or some other account and you have"—

Mr. Hilliard: (Interposing) Excuse me, Mr. Perkins. This answer is broad in scope and is it not going to any definition or explanation of the term "best efforts," although we think that that could not be received in evidence. That was Your Honor's ruling, that testimony on the best efforts—

The Court: It is testimony as to the meaning; the application and the extent that the parties placed to it by what they said or did about it.

To that extent, why, it would have some probative value; [1949] to determine whether or not the contract was performed by either of the parties as distinguished from what their intent was in executing it. It is what they did under it. In that regard, why it would be permissible and it would be permissible to show any directions that the Standard placed upon Perkins in connection with the performance of this contract in their interpretation of it.

Those are areas of proper interrogation. I don't know if we are heading in those areas or not.

Mr. Hilliard: Well, so I understand, we are talking about the '53 contract, we are not then admitting it in terms of negotiations that led up to the term being in there, but it is conversations after the contract was in effect?

The Court: That is what he was telling us about and about the '56 contract.

Mr. Hilliard: May we have our same objection, Your Honor.

The Court: It only goes to actions done and said by the parties with reference to the various accounts. I will permit him to inquire.

The Witness: Shall I go ahead?

Q. (By Mr. Tilbury) I believe you may. A. And I stated to them, I said, "How do you expect me to fulfill

my obligation and my contract that I have agreed to [1950] purchase so many gallons of gasoline when you continuously throw roadblocks in my way? And if you continue to throw them in my way and I should fall below my sixty per cent, you could automatically cancel my contract and I would be out of business and might be subject to a lawsuit."

Mr. Hilliard: I object and move to strike, Your Honor. This testimony has nothing to do with any controversy under the Robinson-Patman Act here.

The Court: That is what the witness said he confronted them with. Let's see what they confronted him with and then I can determine.

Mr. Hilliard: You are overruling my objection?

The Court: At the moment, yes.

The Witness: Mr. Johnsen's answer to me was always the same answer. "Well, we will go along and see how the thing works out and see what we can do about it, see if we can't get you some more territory or get you another account or something."

Mr. Hilliard: In respect to this entire line, I move to strike this entire line of testimony because it in no way aids in the purpose of which it was purportedly offered, related to the term of "best efforts."

The Court: What do you claim for it, Mr. Tilbury?

Mr. Tilbury: Your Honor, it merely shows the construction placed on this by the Standard Oil Company and I— [1951] The Court: The end result is that nothing was done about it.

Mr. Tilbury: Apparently that is it.

The Court: That was just a matter of complaints and countercomplaints during the course of the terms of the contract. It has nothing to do with any of the issues before us whatsoever. Disregard it, members of the jury.

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[2128] Further Direct Examination

By Mr. Tilbury:

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[2138] Q. (By Mr. Tilbury) Mr. Perkins, as long as you have those documents, let me ask you about another figure that appears, and that is if you will turn to the same page I think you have before you almost, which appears to be the second page of Exhibit A on Exhibit 2, the 1953 contract; now, at the bottom of that page, are there stop prices that appear? A. Yes, sir.

Q. Would you give us, please, the stop prices as they pertain to you during those years in question on ethyl and regular gasoline?

Mr. Hilliard: Your Honor, we have been all through this; and after I examined the witness on voir dire on this subject, it developed that stop prices were never reached in this contract, and that really was not relevant to the claim.

Mr. Tilbury: Well, stop prices were always a problem. [2139] They are important. They have restricted this man from dealing as against the Signal Oil and Gas Company.

Mr. McLaury: How could they.

Mr. Tilbury: That is not the point. You can't deal in the future if you know that you are going to be blocked at a certain level, to the same extent that somebody who has a lower price.

The Court: May I have the question?

(Whereupon, the Court Reporter read the pending question.)

The Court: You may give that figure.

A. The stop price on first brand, that is the price which they refused to sell us gasoline should the price go down as low as 12 cents per gallon on ethyl or first grade, and regular or second grade 10 cents per gallon on gasoline. In other words, when gasoline went down to that price, they were not obligated to make deliveries.

The Court: Well, wait a minute.

Q. (By Mr. Tilbury) Would you read—you have page 2 of Exhibit A. I am just asking you for the figures, and



we had better not go into other areas at this time, the stop prices at Willbridge ex all taxes. A. Yes, that is ex all taxes.

Q. What is it for ethyl and what is it for regular, please?

A. Ex all taxes per gallon is 12 cents per gallon for [2140] ethyl or first grade and 10 cents for regular or second grade, ex all taxes.

Mr. Hilliard: May I ask the witness a question?

The Court: Yes, you may.

Mr. Hilliard: I don't know what he is reading from.

Mr. Tilbury: Well, that is not different from mine.

The Witness: Maybe I am reading the wrong thing.

Mr. Tilbury: Do you have the '53 or '56.

The Witness: I am reading from the '56.

Mr. Tilbury: Oh, well, no wonder. Excuse me. If I might just turn to this. Now, look at Exhibit A on '53, the next page at the bottom of the page.

The Witness: Yes.

Q. (By Mr. Tilbury) Now, would you read for us again from Exhibit 2, at this time the stop price on ethyl and the stop on regular? A. You want me to read the paragraph preceding it?

Q. I don't think it is necessary for our present purposes; it will be in evidence anyway; just those two figures? A. At Willbridge, when the price of gasoline at Willbridge ex all taxes reaches a price of 11 cents per gallon on ethyl and 9½ cents per gallon on regular, then they would not be required to deliver gasoline.

Q. All right. Now, would you look at the Signal Oil and Gas contract and read for us the stop prices that apply to [2141] Willbridge; there are some California points which I don't think we need to read.

Mr. Hilliard: What page are we on?

Mr. Tilbury: This would be on page 3 of the exhibit which used to be 1007 and now 321, and this would be paragraph 5B, the second part of that paragraph.

Q. (By Mr. Tilbury) Now, would you read the stop prices that appear for Willbridge?



Mr. Hilliard: Your Honor, may we have an objection as to relevancy. This is not relevant or competent to any issued in this case. There is no claim based on stop prices in this lawsuit.

Mr. Tilbury: I have always made a claim on stop prices. The Court: He may read the figure.

A. The stop price on the Signal Oil and Gas contract at Willbridge or Point Wells—Point Wells is in Seattle—on first brand or ethyl is 5½ cents a gallon; and on second brand is 5 cents a gallon.

[2206] Q. (By Mr. Tilbury) Mr. Perkins, did you have an opportunity then to look at the exhibits that you have inside that envelope without asking me the contents of the envelope? A. Yes, sir.

Q. Are you familiar with those locations that are shown there? A. Yes, sir.

Q. And are the locations which are shown physically, were they similar to the way in which the various stations—I had better not say what they are. It is hard to express this. As far as the physical appearance, was the physical appearance as shown in this exhibit, was it similar to the appearance at the time that you saw it during the claim period; I realize there are probably some that are for other locations; has the physical appearance changed? A. As far as I can recognize them, now, they are probably the same.

[2207] Q. All right. A. They might be some changes.

Q. All right. Would the general appearance be the same? A. Yes, the general appearance is the same.

Q. All right. The same sort of— A. Operation.

Q. All right. And are there some that were in operation that you see in that group of exhibits during the claim period? A. There is—there are three here that was during the claim period.

Q. All right.

Mr. Tilbury: Your Honor, we would offer in evidence the contents which I believe the defendant has seen. They

were previously marked and were the subject matter of an offer in the prior proceedings.

Mr. Hilliard: Excuse me.

Mr. Tilbury: That is all I have.

Mr. Hilliard: I am not sure that I have an objection, your Honor. Maybe counsel could tell us the purpose of the offer and also the date that the photographs were taken.

Mr. Tilbury: The photographs were taken fairly recently. They were taken this summer, I believe, and they were taken by Photo Art Studio. They were not taken by either the plaintiff or any person connected with the [2208] plaintiff, and they merely show a general indication of the way in which the stations appear during the claims period. I realize there are maybe some changes, but I don't think they are too material changes.

Mr. Hilliard: The general representations then would be the same now at the time of the pictures as the time of the claim period, the general conditions.

[2209] Mr. Tilbury: I think they are similar or substantially similar, yes.

Mr. Hilliard: So long as there isn't some particular sign for which he is claiming is identical, I can see no reason that we would object, Your Honor. But I haven't looked at them again since the last trial, but as long as the general representation—

The Court: Well, I assume then that these are pictures of installations that were in existence during the claim period; is that right?

Mr. Tilbury: Your Honor, to be quite frank, there are, I think, only three that were in existence during the claim period. There are some others that have come into existence subsequent to that time, and separate—

Mr. Hilliard: Well, I think if he limits his offer to those that were in existence in the claim period—

Mr. Tilbury: I can do that, yes.

The Court: With the understanding that whether or not there has been any changes since that time on the date of

the picture will depend upon all the evidence that is eventually given to the witnesses that refer to them. Is that your intention?

Mr. Tilbury: Yes, sir, that is right.

The Court: Well, then, we will have them received on that basis.

[2210] (Whereupon Plaintiff's Exhibits 106-A & B, Photographs, were received in evidence.)

[2221] (Plaintiff's Exhibit No. 106C, being a photograph of the Regal Station located at 39th and Powell Boulevard, was received in evidence.)

Mr. Tilbury: The station, Exhibit marked 106D, is the station at 250 North Broadway, sometimes referred to as Broadway and Wheeler or Broadway and Weidler.

The Court: Any objection?

Mr. Hilliard: No, Your Honor.

The Court: It will be received.

(Plaintiff's Exhibit No. 106D, being a [2222] photograph of a Regal Station located at 250 North Broadway, was received in evidence.)

Mr. Tilbury: The next one, Your Honor, is 106E, the last one, which is a station marked on the back at 420 Southeast 122nd.

Incidentally, the date and place and time are specified by the photographer.

This one was taken on July 15th, 1963, this summer, at 11:00 a.m. by Thomas Bessler of Photo-Art Commercial Studios.

Mr. Hilliard: May I ask one question of the witness, Your Honor, in connection with these?

The Court: You may.

Mr. Hilliard: Are these pictures that you have looked at and identified by these numbers just recited, Mr. Perkins, are they substantially the same as the conditions at the

stations during the claim period? In other words, are the conditions reflected in the photographs—

The Witness: I would say substantially. If I would have drove by them then and drove by them now, I would recognize the station.

Mr. Hilliard: I have no objection.

The Court: They will be received.

(Plaintiff's Exhibit No. 106E, being a photograph of a Regal Station located [2223] at 420 Southeast 122nd, was received in evidence.)

Mr. Tilbury: There are two additional ones, Your Honor, which were marked as exhibits but which do not apply and were not in operation, as I understand it, during the claim period. One at North Interstate, that is marked Plaintiff's Exhibit 106B, and the other one 106A is the station at 11 Northwest 21st, and this is marked 106A. Neither of these stations were in operation.

I will withdraw them voluntarily unless the defendant wants to put them in.

Mr. MacLaury: May we see them?

Mr. Tilbury: Oh, surely.

Mr. MacLaury: Do we have a date when these stations were opened?

Mr. Tilbury: That was identified in Mr. Shepard's deposition and he had a specific time. I am quite sure the last two were outside our claim period.

Mr. MacLaury: These stations were open some time after November, 1957?

Mr. Tilbury: Yes, I am sure.

Mr. MacLaury: Sometime during the year '58 or '59 they were opened?

Mr. Tilbury: Yes, I am quite sure. Mr. Shepard's deposition would reflect that. I can find that, if you wish. [2224] Mr. Hilliard: Well, we would have no objection to this coming in, Your Honor, with this explanation, just a part of the total picture.



The Court: The numbers A and B, they will be received.

(Plaintiff's Exhibit No. 106A, being a photograph of a Regal Station located at 11 Northwest 21st Avenue, and Plaintiff's Exhibit No. 106B, being a photograph of a Regal Station located at North Interstate, were received in evidence.)

Mr. Hilliard: May I ask Mr. Perkins—those last two, Mr. Perkins, in North Portland, and the other location—if he could be handed those—those were some time after December of '57 that they were opened?

(Whereupon the Clerk handed the photographs to the witness.)

Mr. Tilbury: I will be glad to concede, if it will help. I am sure they were.

[2291]

Maxine Buddy Ross

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows.

Direct Examination

By Mr. Tilbury:

Q. Mrs. Ross, would you state your name for the record, please? A. Maxine Buddy Ross.

Q. Where do you live, Mrs. Ross? A. 5218 Northeast 72nd Avenue, in Vancouver, Washington.

Q. Are you employed at the present time? A. Yes, I am.

[2292] Q. What kind of occupation do you follow? A. I am bookkeeper and executive secretary for Clyde Perkins.

Q. Are you employed strictly by Clyde Perkins? A. By the family, yes.



Q. All right. How long have you been working for them? A. I have been working for Mr. Perkins for over thirty years.

. . . . .

[2488]

Vernon Arthur Mund

was thereupon produced as a witness in behalf of plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hall:

Q. Dr. Mund, would you restate your name in case any juror didn't hear it? A. My name is Vernon, V-e-r-n-o-n, Arthur Mund, M-u-n-d.

Q. Where do you reside, Dr. Mund? A. I reside in Seattle, Washington.

Q. What is your profession? A. I am a professor of economics. I am an economist.

Q. At what institution? A. I am a professor at the University of Washington in Seattle.

. . . . .

[2498] Q. (By Mr. Hall) Yes. Was there a discussion in masquerade of monopoly in one of your writings on the petroleum industry? A. The book, "The Masquerade of Monopoly" was written by a former professor of mine at Princeton.

Q. Oh, I'm sorry. A. I was employed in 1929 as his research assistant to help him write this book.

Q. I see. A. And in this book which I helped him write, he had a detailed analysis of the Standard Oil of New Jersey case and of business practices in the oil industry we will say up until about 1920.

Q. I see. A. In that particular book I made quite a detailed study of the practice of refusal to sell in the oil industry in 1956 and '57 and as Economist for the Senate

Small Business Committee. I was given the opportunity, you see, to have access to records in the Federal Trade Commission and the [2499] Department of Justice in a confidential way, never to reveal names of complainants, or to pinpoint the finger at the person doing the practice, but, nevertheless, to study the practice. The practice of major oil companies to refuse to sell gasoline in particular and in some cases heating oil to independent small businessmen; and so indeed it came from throughout the United States, the Pacific Northwest, the Pacific Coast and throughout the United States, because all these complaints were centralized in Washington, D. C. in the Department of Justice Federal Trade Commission; and my studies on this subject are published. I have them in my briefcase, and gasoline is identified in these studies as one commodity. [2500] Mr. Hall: Well, Your Honor, I think the witness is testifying as to his experience, need not at this stage come to any conclusions of the studies.

The Court: He hasn't come to any conclusions with reference to this case. He is just telling of his work product in connection with other matters in his experience with it. You may continue.

The Witness: I was just saying that in my studies which are published, gasoline is identified as one of many commodities or of several commodities in which refusal to sell was then practiced. Then—

Q. (By Mr. Hall) Well, Dr. Mund—pardon me. A. Then further, and finally, in my work under the Ford Foundation grant to study identical prices, here again I had access to Government data in the Department of Justice, and I found under the law any Federal agency finding that it has identical prices when it buys products and believing that there is an anti-trust violation has to report that fact to the Department of Justice. And when I was working with that in 1958, I found 10,000 reports in the Government office on identical bidding. Ten thousand. You can imagine how long it takes to go over 10,000

reports. In these 10,000 reports, I found a number bearing on gasoline, and this is a matter of record because some of those reports were subsequently published by the Department of Justice, so it is a matter of [2501] record. It isn't my word alone.

Q. I might now reask you that question. As a result of your studies in the petroleum industry, did you come to any conclusions as to the existence of an open market in that industry?

Mr. MacLaury: Well, Your Honor, I don't think that the open market has any relevancy or materiality. I object to it.

The Court: Yes. We are dealing with theories of economics in the business, and this witness can explain to the jury in this realm of the science his own conclusions that he reached generally. He may continue.

The Witness: On the basis of my studies and my examination of complaints filed with the Federal Trade Commission of the Department of Justice, I came to the conclusion that there is no genuinely free and open market in the sale of gasoline in particular at the primary and secondary wholesale levels, because the evidence indicates that anyone really isn't free to go and buy what he wants on the same terms and conditions available to anybody else or available to other people who are, in fact, buying. The proof of that statement is simply the fact that all these people complained that they couldn't buy. The evidence that they couldn't buy. Then when you go one step further and look at the sale of gasoline by the major companies, you find that the sales [2502] to Government agencies in particular, the bids are identical, which means that it is not an open market—an open, competitive market because when you build a house and involve bids for contracts or give a variety of bids, they compete and try to get the business. When they try to get one, it is a case of absence of competition.

Mr. MacLaury: Your Honor, I suggest that Dr. Mund is going beyond the realm of the question.

The Court: The question is dealing with open markets.

Mr. MacLaury: And I further object, Your Honor, on the ground that identical bidding and parallel pricing is not part and has no materiality to the lawsuit here in Court.

The Court: It isn't pinpointed—

Mr. MacLaury: Very well.

The Court: —to this litigation, members of the jury, in this answer and question that is being given to you now. This is just in the realm of the science itself and of the Doctor's experience that he has gained through his investigation of the matter and what theories he as an economist has developed. They are generalities.

. . . . .

[2506] Q. (By Mr. Hall) Dr. Mund, what is the general definition of the term "price discrimination"?

Mr. MacLaury: Your Honor, I would object to this term. That calls for the legal conclusion of the witness and invades the province of the Court.

The Court: No, I think that we are entitled to have an area of communication as distinguished from whatever the Court might determine by way of matter of the law the statutory meaning of it. But in the field of economics and in the business, we can all be advised as to what is a general acceptable meaning of price discrimination.

The Witness: The term price discrimination went from popular use into economics, business, and the law. And Webster's Unabridged Dictionary describes the word generally as making a distinction, making an unfair or injurious distinction. This is discrimination. In relation to price, it would mean making a difference in price, charging some people a higher price, others a lower price, for the same class of goods under substantially the same conditions. This term, from general language, went into law and economics primarily in this country during the period 1830 to 1900 with the development of railroads, and the first laws in Court decisions on the term grew out of rail-



road cases, [2507] situations in which a railroad would charge some people a higher rate than others or a rate for—a higher rate for a shorter haul than for a longer haul. The first law we had on rate or price discrimination was found in the Interstate Commerce Act of 1887 in which Congress sought to curb this practice. And so the term, in my opinion, is one today which is essentially the same. Economics or the law, the definitions are the same according to all my study.

[2508] Q. (By Mr. Hall) Does price discrimination take varying forms? A. Yes, it does. Price discrimination takes some three forms.

In the first place, experience shows as business practice it may be practiced between persons. A situation which a supplier charges some people a higher price and some people a lower price. In price discrimination there are always two prices, a higher price and a lower price, for the same class of goods under substantially the same conditions and discrimination is contrasted with competition in an open market where all customers buy at the same price. It is the reverse or the negative of competition. Discrimination and competition are mutually opposite.

Discriminations can take place as between persons; it can take place as between places. For example, a large bakery operating in Portland might charge a high price for bread in Portland and then a low price in Eugene, so that it got a higher price on sales in Portland than it netted on sales in Eugene. That would be place discrimination, you see. That is commonly practiced. And then there is a third type of discrimination in which a large supplier who has the power to use this practice discriminates between goods and uses.

For example, there is a case pending today involving the [2509] Borden Milk Company, in which the Borden Milk Company has been found by the Federal Trade Commission guilty of selling its blue label milk at a high price and the same milk in another can with a different label a much



lower price, and so they are getting two prices for the same milk under substantially the same conditions. That is the discrimination as to uses or kinds of goods.

So you have three kinds, as to places, as to persons, and as to kinds of goods.

Q. Can subsidies be a form of price discrimination?

Mr. MacLaury: I will object to this question on the grounds it calls for a legal conclusion as has been defined by the Court in many cases.

The Court: I grant you it is a borderline, but, first of all, I think you used a technical word there that I think that might have an economic meaning in the science, and have the witness explain that.

Q. (By Mr. Hall) Dr. Mund, I am asking you as an economist whether subsidies can be a form of price discrimination?

Mr. MacLaury: I object to the form of the question.

The Court: What I had in mind, he might explain to the jury his concepts and area of communication; what is a subsidy.

Mr. Hall: All right.

The Witness: The term "a subsidy" comes from—

[2510] Mr. MacLaury: Excuse me for interrupting, but I want to protect my record, Mr. Mund.

The Witness: That is all right.

Mr. MacLaury: I would like to repeat my former objection to the former question. It calls for a legal conclusion.

The Court: Court and counsel have been using the word "subsidy" throughout the trial, and it will give us an area of communication if we understand what his meaning of "subsidy" is.

Mr. Hilliard: I point out that wasn't the question, what his meaning— The question was, can subsidies be a form of price discrimination.

The Court: I think that was changed. We are dealing with his definition of the word "subsidy" at the moment.

The Witness: The term "subsidy," the English term

"subsidy" comes from the Latin "subsidiium," which means to aid or to help. It is a subsidy. It is an aid or a help. That is the generic meaning of the term. And subsidies can take various forms. It can take the form of a grant of money. Our Government subsidizes the American shipping lines by paying the American Mail Line, for example, the difference between the foreign wage rate and the American wage rate. It is a subsidy to help, it is an aid, it is a cash grant. That is one form of subsidy, you see.

The Government subsidizes various situations by making [2511] things available at a lower price. That is a form of subsidy. And then the Government also subsidizes certain situations by means of a tariff to keep out the goods so that the domestic producers can get a higher price, you see. It is an aid or a favor. It can work in the form of giving people more money, either directly or indirectly, by having lower costs, by lower costs. Now, to answer your question, if a supplier were to give one customer a lower price than another, that lower price would be an aid or a favor, and thus generically a subsidy.

Q. Is it necessary that the subsidy be in the form of a lower price? A. It doesn't have to be a lower price; as I have mentioned, in the case of our own Government, subsidies frequently take the form of price assistance or cash grant.

. . . . .  
[2513] Q. (By Mr. Hall) Under what marketing condition, in other [2514] words, in a retail market, would a business concern be in a position to practice price discrimination? What economic factors would be involved to permit a business concern to do such a thing?

Mr. Hilliard: That again, Your Honor, would be an abstract conclusion of the witness, not based on a fact situation.

The Court: It pinpoints it now. We have been told what

an open market is and that type of thing. He may answer it.

Mr. Hilliard: So my record is clear, this calls for a hypothetical question without asking the witness to assume any fact situation existing in this case.

The Court: He is giving us his information and knowledge. You may answer it.

The Witness: The question asked is one which is frequently discussed in economic literature, namely, under what conditions can price discrimination arise or exist.

It is a business practice which is not found in certain markets, as my studies have shown, in public writings. It does not exist, for example, in the wheat market or the corn market or the apple market or the egg market or the potato market, but it does exist in certain markets.

The testimony of leaders in the field of economics going back to Professor Taussig at Harvard, Professor Jacob [2515] Viner, Chicago, now at Princeton, Professor Fedder at Princeton, the Canadian Combines Commission in Canada, and my own writings, as well as those of others, have developed the generalization that price conditions, that price discrimination as a business practice can arise and exist only under conditions of some degree of monopoly power. In other words, the conclusion is that price discrimination and monopoly are Siamese twins. You do not find price discrimination without some degree of monopoly.

Q. Why, under these conditions, would a business concern practice price discrimination?

Mr. MacLaury: Same objection.

The Court: It will be sustained.

Q. (By Mr. Hall) What is price leadership?

Mr. MacLaury: We object, Your Honor. That question is not pertinent to the issues in this lawsuit.

The Court: I don't know. It may or may not. It depends upon how we ultimately view the legal transaction.

Mr. MacLaury: As far as this lawsuit is concerned, it calls for a legal conclusion.

**The Court:** It will be overruled.

**Q. (By Mr. Hall)** Will you define price leadership for us? **A.** In an open market, as I have mentioned, agricultural products, livestock, price is made by the forces of supply and demand. No one person makes the price, no one firm. It [2516] is made by the market. If the price is too low, buyers bid it up. If it is too high, sellers bring it down. The seller and demand make the price. That is the law of price and demand.

In certain markets where there are a few sellers and some few or one control a large part of the supply, that control over supply may give the large supplier the power to make or affect the going price, which is largely followed by other people in the industry, and that is called "price leadership."

Price leadership is the action or power of making the going price which is largely followed by others in the industry. The classic example, of course, is in the steel industry, where the U. S. Steel Corporation admittedly has long been the price leader which others follow.

**Q. (By Mr. Hall)** Dr. Mund, maybe I could get you to return to this blackboard now.

**Mr. Hall:** Mr. Bailiff, would you draw it up again.

**The Court:** You may.

**Q. (By Mr. Hall)** You have the supplier and the two customers indicated here. I would like to ask you what the economic effect would be on one of those customers of a price discrimination in favor of the other customer?

**Mr. MacLaury:** Your Honor, that again calls for the conclusion of this witness which is not based on facts that [2517] have been offered in evidence in this case.

**The Court:** May I have the question?

(Whereupon the reporter read the previous question.)

**The Court:** He may answer that as a general proposition.

**The Witness:** We may assume that this customer got the product for twenty cents and this customer gets the product, we will say, for 22 cents. (Indicating on diagram.)



Customer No. 2 pays 22 cents, this customer pays 20 cents. That indicates discrimination. There is a distinction in pricing in substantially the same conditions and the effect here is to give this customer higher costs in relation to customer No. 1. His costs are higher now in the retail market. So we can make a list of the effects. One, that he has higher costs. Since his costs are higher, he has got to—higher than this man, he has got to try to recover those costs out of his price, and so that means that his price, these men are competing, this may be retail stores selling bread, and this customer has got higher costs than this man, this merchant, and he has got to return the higher costs out of the price of bread and he finds that his prices then are higher than this man's prices because his costs are higher, and so he has—so his sales decline.

Now, when your sales decline, he finds he has less volume and he finds that his fixed costs are the same, rent, [2518] the taxes, the salaries, delivery costs, insurance remains the same, but his volume is down, so his unit cost goes up. His unit cost goes up; since his unit cost goes up, his profit declines. And that is his income.

And since his profits decline, he finds that he can't maintain his facility, and he can't pay his help, and so his general business deteriorates and particularly from a business point of view his capital value goes down. His capital loss.

I will illustrate that. Let's assume he has been getting \$200 a year income profit. This is a simple figure. And we can capitalize that at five per cent to see what the capital is worth of his business. Now, if his income is \$200 a year and if you capitalize it at five per cent, his capital is \$4,000. That is what his business is on the basis of \$200 a year income. Now, if the income falls down to, say \$50 because of the factors I mentioned, higher cost, loss of sales, loss of profits, what is his capital? You capitalize at five per cent his business is now—his capital has now fallen to \$1,000, so he has a loss of capital from \$4,000 to \$1,000. A loss of capital because of the loss of profit. The profit



going down from \$200 to \$50 a year. So to answer your question, when competing customers have higher—in the case of competing customers, one has higher costs because of price discrimination, this chain of [2519] events inevitably arises and develops and it was for this reason that Congress took steps to pass laws against discrimination because under these conditions small business can't survive. Small business cannot survive in a regime of discrimination; it goes out for the reasons I mentioned, and if we are going to preserve small business, we have to have laws to prevent this sort of thing; other small businesses would go out regardless of its deficiency.

[2520] Q. (By Mr. Hall) (Continuing) Dr. Mund, I might ask if you would put "Dr. Mund" on those two pages you have been drawing on there.

The Court: Members of the jury, you have heard Dr. Mund give his concern on his belief as to why Congress passed a law. It is not for the jury or not for us to question why or reason why Congress passed the law. Congress did enact the law. When the Court gets to the point of instructions as to what the law is, do not question it. With that, you may continue.

Mr. Hall: May I request that this be marked, Mr. Clerk.

Mr. MacLaury: Both sheets marked?

Mr. Hall: Both sheets marked.

The Clerk: They have been marked Plaintiff's 333A and 333B.

Mr. Hall: Your Honor, we are offering these in evidence for illustrative purposes.

The Court: They will be received as part of the record in connection with the witness' testimony.

Q. (By Mr. Hall) Dr. Mund—

Mr. McLaury: Well, your Honor, we have of course our objection that we have stated before.

The Court: I understand.

Mr. McLaury: The objection also goes to the testimony of this witness.

[2521] The Court: I understand your position.

Q. (By Mr. Hall) Now, Dr. Mund, assuming that the facts in the present case would show that a large seller of petroleum products sold at a higher price to one customer and at a lower price to another customer, each competing with one another under substantially the same conditions and selling the same products, what would be the economic effect of that business practice?

Mr. Hilliard: I object to the form of the hypothetical question, your Honor, because it does not assume facts in evidence in this case that have been established, your Honor.

The Court: Under the plaintiff's theory, he may adopt what he wishes, if it is ultimately sustained by the evidence in the case.

Members of the jury, the whole hypothesis then is destroyed and any meaning based thereon is meaningless. So, pay attention to the hypothesis that counsel suggests; and then, ultimately, if that hypothesis is true, then you may give it the weight of your opinion, or the opinion of the witness such weight as you as triers of the fact are entitled to give it. You are being advised that you may rely on the hypothesis.

Mr. McLaury: Your Honor, at the risk of objecting further, interrupting further, to make our record clear, our objection is based primarily on the ground that the [2522] facts stated in the hypothetical question do not fairly describe the evidence with respect to this market, which he has introduced into the record to date.

The Court: I would like to have the question again as to the opinion.

(Whereupon, the Court Reporter read the pending question.)

The Court: You may answer.

A. The economic effect, the economic effect—

Mr. Hilliard: Your Honor, do I understand the order of

this thing that he should be asked if he has an opinion and then be asked to state it.

The Court: Yes, he should. That wasn't the basis of the objection, and I wasn't going to take the time.

Do you have an opinion concerning that, doctor?

The Witness: Yes.

The Court: The next question should be placed.

Mr. McLaury: We would make an objection.

The Court: Well, let's lay that foundation hereafter.

Mr. Hall: Yes, your Honor.

The Court: You may give your opinion.

Mr. Hilliard: We have an objection.

The Court: You may answer.

A. My opinion and understanding and knowledge of this practice would indicate that the effects would be as I illustrated in the diagram just given to the Court.

[2523] Mr. Hall: For the record, that would be Plaintiff's 333A and B, your Honor.

A. (Continuing) And if this practice were to continue for any length of time based on the evidence which we have from other studies—

The Court: That goes beyond the question.

The Witness: All right. I am sorry.

Q. (By Mr. Hall) Dr. Mund, taking the period of 1955 to 1957 and assuming the existence of price leadership in the marketing of gasoline and other petroleum products and of a non-open market as you have defined that term for such products and a decline in independent jobbers in the petroleum industry and a constant upward trend in the tank wagon price, that is, the price charged to retailers, do you have an opinion as to the economic condition of that market?

Mr. Hilliard: Your Honor, we would object to that again. Again, the hypothetical question does not merely set forth the factual matters in this particular case. It assumes facts not in evidence. It assumes situations which are not at issue in the case and asks for an assumption of price leadership on which there is no evidence in this case.

The Court: We have to of course relate them, to relate the question to the area of communications we have before us. We have to assume price leadership within the definition we have just given to the jury. He may answer.

[2524] Mr. McLaury: Your Honor,—

The Court: Yes.

Mr. McLaury: Further, no definition of the market is described, and the evidence is recited with respect to the decline in independent jobbers which I believe is not reflected in the evidence.

The Court: No, if there is testimony in the record concerning that phase, it will have to be up to the jury to determine the extent, what the extent of that evidence is.

There is pinpointed in the objection the fact there is not in the hypothetical an area of your market.

Mr. Hall: I will rephrase the question, your Honor.

Q. (By Mr. Hall) Taking the period of 1955 through 1957 and assuming the existence of price leadership, as you have defined it in the marketing of gasoline and other petroleum products in the West Coast; and assuming a non-open market for such products as you define the term to us; and assuming a decline of independent jobbers in the industry, that is, the West Coast industry, and assuming a constant upward trend in the West Coast tank wagon price, that is, the price charged to retailers, do you have an opinion as to the economic condition of that market?

Mr. McLaury: Your Honor, he is still not defining the market unless he is talking about the West Coast market.

The Court: He certainly is.

[2525] Mr. McLaury: And again I would point out, your Honor, he is talking about a decline of independent jobbers in the West Coast industry, and I have an objection to that. We would of course have all the, repeat all our other objections to the question as originally stated.

The Court: I have the basic objection, and I understand your objections to this hypothetical, and I will abide by my ruling.

Q. (By Mr. Hall) Do you have an opinion? A. My opinion is under the conditions sketched by you, the trend



would be toward increased concentration and an increase in oligopoly and a continued decline of small business with the tendency for the consumer, or the owners to face prospective higher prices.

[2526] Cross-Examination

By Mr. Mac Laury:

[2538] Q. All right. Now, Dr. Mund, you were asked a question, a hypothetical question concerning the market here in the West; I would like to put this question to you with respect to the gasoline, automotive gasoline market here in Portland during the years 1955 and '56; now, will you assume that in this Portland market—

Mr. Hall: May I make an objection, counsel.

Mr. McLaury: You certainly may.

Mr. Hall: Your Honor, I believe this is quite a bit beyond the scope of the direct examination. This Portland market wasn't touched on at all by the witness.

Mr. Hilliard: We have to apply, Your Honor, the opinions of the witness to the facts of this case.

The Court: May I have the question.

(Whereupon, the Court Reporter read the pending question.)

The Court: Yes, the objection will be sustained.

Q. (By Mr. McLaury) Well, let me ask you this, Dr. Mund. When you testified, you recall the hypothetical question asked you with respect to the market to which price leadership was maintained as described and that conditions of a non-open market maintained, as you have described, and that there was a decline in independent jobbers in the West Coast industry and that there was a constant upward trend in the tank wagon price on the West Coast, and then you stated certain [2539] opinions; did you intend those opinions to apply to the Vancouver market or the Portland market or the area generally where—let me put it specifically to the Portland market, the Van-



couver market, or the market in the Willamette Valley, Jefferson, Albany, Roseburg, or up to the Northwest and Centralia; did you intend that opinion to apply to effects and conditions in those markets?

Mr. Hall: Now, your Honor, I would object to the form of this question as being a multiple question.

The Court: It is.

Mr. McLaury: Well, I think counsel is correct. We will take it one by one.

The Court: I think I should interrupt these proceedings and make the announcement that has been handed to me. The President was shot. This has been declared officially, so I shall recess until 1:30 this afternoon.

Members of the jury remember the admonitions. Keep your minds open. 1:30 this afternoon.

[2610] Maxine Ross thereupon resumed the witness stand as a witness in behalf of plaintiff, and, having been previously duly sworn, was further examined and testified as follows:

#### Direct Examination (Continuing)

By Mr. Tilbury:

[2646] Q. Now, what is the variance—I won't ask you for every figure there—what is the price charged by Standard to Clyde Perkins as shown by your computations? A. It is sixteen, a little over seventeen—or a little over sixteen cents a gallon. It is sixteen point four eight six five cents per gallon.

Q. At the beginning of the period— A. Yes.

Q. —that you have identified? A. April 2nd.

[2647] Q. What was it at the end of the period? A. At the end of the period, we were paying over seventeen cents, seventeen three seven four.

Q. All right. Now, those are both figures that do not include the State Tax but do include the Federal Tax? A. That's right. The State Tax six and a half cents, and

Federal two cents at that time. The two cents is included in the Standard billing.

Q. How about the price charged by—well, let's not say charged, let's say invoiced by Perkins Oil Company of Washington invoices, if this will help, to Mr. Les Carter?

A. On April 2nd, we were invoicing Les Carter on ethyl a little over twenty-four cents a gallon, and on regular a little over twenty-two cents a gallon.

Q. Now, are those including taxes? A. Yes, that is including taxes.

Q. All right. So, to get the actual, to relate to the other, you would have to take six and a half cents off of that, is that true? A. Yes. Yes. You would have to take six and a half off of this to get a definite comparison with your cost.

Q. If I deducted six and a half from twenty-four I would come up with seventeen and a half? A. Yes.

Q. All right. Now, what was the price at the end? [2648]

A. Well, at the end we were selling Carter for twenty-four and twenty-two.

Q. How do those compare with the earlier figures you have given? A. We were selling for twenty-four thirty and twenty-two thirty, three-tenths of a cents.

Q. All right. In other words, within less than half of a cent— A. Yes.

Q. —is that true?

Now, as far as the margins that you computed, would you tell us what your computations establish on that; maybe I shouldn't use the word "establish", but what does it show?

A. Well, in April, in April, 1955, we were making over a cent a gallon. It was a cent and a third, approximately.

Q. On which products? A. On both products.

Q. All right. How was it at the end? A. Ethyl and regular. By the end of the period of time in October, that had decreased about 90 percent. It was a little over one-tenth of a cent on Ethyl and two-tenths of a cent on regular; about 90 percent in—decrease in margin.

Q. In other words, from a penny, you went down to one-tenth of a penny, is that true? A. Yes.

[2649] Q. Is that true of both regular and ethyl? A. Yes, it is.

[2695] Q. (By Mr. Tilbury) Now, do you have Exhibit No. 335? A. Yes.

Q. Now, what did you—in general, what sort of information did you develop from that? A. I developed the layed-in net cost per gallon at Centralia by Perkins' purchases from Standard Oil, and Signal Oil and Gas, their Centralia price based upon the answers in the interrogatories, and on Ethyl it was one cent a gallon. Signal Oil and Gas' price was one cent a gallon better than Perkins' price using Centralia as a destination. It would be layed-in to Centralia. And on regular, it was a half a cent better.

[2696] Q. (By Mr. Tilbury) When you say "better price," better from whom? A. Their laid-in price from Centralia had they both been picking the gasoline up in Centralia or Willbridge and hauling it to Centralia, one had a better buying price than the other.

Q. All right. What did—now, Signal Oil & Gas, according to the calculations you have made, you show Mr. Harris here, too, is that true? A. Signal Oil & Gas sold through Harris Petroleum.

Q. All right. Now, as far as Mr. Harris' selling price to Les Carter, what did you determine on the basis of the calculations that you have made? A. Mr. Harris sold to Les Carter at almost a cent a gallon cheaper than what we sold to Les Carter and almost a half a cent a gallon on regular. Carter's buying price was better from Harris than it was from Perkins.

Q. All right now, in other words, Mr. Harris, who was—did you show Mr. Harris buying his products from Signal Oil & Gas Company? A. Yes, he purchased from—he was invoiced by Signal Oil [2697] & Gas, Harris was.

Q. Could you illustrate this for us, this calculation you made this particular date, April 27th, 1955? A. You want me to put most all of it on here? (Indicating to paper attached to easel.)

Q. If you could just illustrate the nature of the calculations that you have made. A. Well, first they had a common source, Standard. Perkins and Signal Oil. (Whereupon the witness wrote on the paper attached to the easel.) This was your common source of supply. (Indicating to Standard.)

Perkins was under contract to Carter or Carter was under contract to Perkins, and this was our customer down here. Signal Oil & Gas sold through Harris to Carter. (Indicating to paper attached to easel.)

[2853] (Whereupon, Mr. Hall took the witness stand and read the answers to the questions as propounded by Mr. Tilbury.)

"Q. Would you state your name please? A. William A. McAfee.

Q. And your address, Mr. McAfee? [2854] "A. 15 Longview Court, Hillsborough.

Q. California? A. Yes.

Q. How long have you lived there, sir? A. Four years.

Q. How long have you been with Standard Oil? A. Thirty-two years.

Q. Your occupation at present with them is what? A. Vice present and director of Western Operations.

Q. What is your authority in connection with that, the scope of your duties? A. Well, I have five departments of Western that are reporting to me and have the responsibility for supply and distribution for Western."

"Q. From your experience in this industry for many years, could you give me your judgment as to how much a jobber would require as a minimum in order to be able to operate his business?"

[2855] "A. Well, I can only tell you on the basis of what I know they lived with, which would range from four, four and a half cents to five and a half, six cents, in that area.

Q. Would you regard four or four and a half cents to be a minimum? A. Well, as I explained to you a little earlier, we have jobbers and had jobbers ranging from 200,000 gallons a year up to many million gallons a year, and certainly the 200,000 gallon a year operator could probably live very nicely within the three and a half or four cent spread.

Q. Do you know of any jobbing accounts where they are able to get by with two cents or under as a margin?

A. As a gross margin?"

Mr. Tilbury: A jobber. Oh, I'm sorry.

"Yes." Pardon me.

"A. A jobber?

Q. Yes. A. No, I don't know of any conditions like this.

Q. Can you give me the names of any jobbers in the 200,000 bracket? Are there any still? A. Now? Today?

Q. Yes. [2856] A. Well, probably not today. I was thinking about the period you were talking about here, '57 to '58,"—

Mr. MacLaury: Just a minute.

Mr. Hall: How is that.

"A. (Continuing) '57 to '58, and at that time the MacKenzie Kerosene in San Jose was in that category, a small jobber.

.....  
"Q. Is this about the only one? A. That's the only one I can recall.

Q. Would you give me some sort of idea as to how much you feel that a retailer should have in order to keep his station operating? A. Well, I am not a technician in this regard. I wouldn't be able to give you a very scientific answer.



Q. I am just asking for your best judgment as to what you would regard as an absolute minimum in order to keep the door open."

[2857] "A. All I know is that for many years they operated on what they talked about as a four-cent spread, and they seemed to exist on that basis. They don't do that today, certainly. It's upwards to five and a half to six cents today."

Q. Would you regard anything less than four cents to be a marginal type operation? A. Once again, on inexperienced advice, I would say I would have to think so.

[2860] **Allen Perkins**

was thereupon called as a witness in behalf of the plaintiff, and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Hall:

Q. Mr. Perkins, what is your relationship with Mr. Clyde A. Perkins, the plaintiff? A. Clyde Perkins is my father.

Q. Now, where do you live? A. I live in Anacortes, Washington, at the present time.

Q. And when did you first start in your father's business? A. I believe it was 1931 or '32, right after I got out of high school.

[3023] Q. (By Mr. Hall) Turning now, Mr. Perkins, to Plaintiff's 93-A-1—

[3024] Q. (By Mr. Hall) Will you identify this chart 93A-1 for the Court? A. Yes. This is a summary of gallons sold to various customers, regular customers of ours,

distributors and large service stations, and I have broken these sales down into our fiscal year figures which fits our books, and then I have worked it out to their average gallons per month that they purchased from us during these four periods of time.

Also I have, when we started selling them, the month we started selling them and the month that we ceased selling them, if the case developed.

Q. All right now, this is, you said, summary of gallons. Is there a combined figure for regular and ethyl gas? A. Yes, combined regular and ethyl and it covers only gasoline.

Q. What is your source for this information? A. I got this information from our recap cards and our customer cards, which is our accounts receivable basically and sales.

Q. Is that the 221D series that you have up there? A. Yes, yes, they are the postings from the actual invoices of the individual sales.

[3025] Q. And they are already in evidence? Are they marked received? A. Yes, these are. I don't—

Q. Just the 221D series. A. Yes, they are received.

[3035] The Court: It will be, and it is received as a summary of the accounts in connection with the testimony of this witness.

(Whereupon, Plaintiff's Exhibit 93A-1, being a chart, having been duly offered, was received in evidence.)

Q. (By Mr. Hall) Now, Mr. Perkins, are these records that that information came from, again, I just want to make certain I understand this, came from your customer ledger cards? A. Yes, sir.

[3036] Q. (By Mr. Hall) Now, let's take these accounts here. You have thirty something on there, and I prefer you take some of the big ones; let's take the Don Fraser Company first? A. Well, I have Don Fraser listed. They had them listed in the two places.

Q. Just a moment, please. A. Yes, that's right.

Q. That is true. I will have you explain that in a moment. Please bear in mind that the right four columns here are not now to be used, so you just turn that under?

A. Yes, I understand.

Q. All right. Now, with regard to the Don Fraser Company and the Don Fraser Oil Company, will you explain the relationship? A. Well, this is a summary of gallons for four periods of time. The first period of time is from April 1, '55 to September 30, '55; and then the next two periods are full fiscal years beginning October 1 to September 30th in each case, and then there's two months later that is October and November, well, October and November of the last two months of '57.

Q. Now, will you— [3037] A. This isn't going to mean anything to anybody without converting it to a monthly average because the periods of time are not related to each other, and it just means nothing.

Q. Well, let me do this then; let me take the two months—there's two periods of time here which are related to each other? A. We can give you two fiscal years.

Q. That's right. A. And yes, and complete the two outer periods.

Q. Take the Don Fraser—take the first fiscal year in the period and the amount of gallonage? A. It was 853,252 in the fiscal year '55 through '56; and 805,508 gallons for the fiscal year '56 through '57. Now, I have him duplicated with the same figures for the reason that I arbitrarily split him in half for the reason that Don Fraser testified that 50 percent of his business was owned by Clyde Perkins, and the other 50 percent was not owned by Clyde Perkins. I'm speaking of real property. So, if you want to get his figures correctly, you would have to add to it, add both, both of them together.

Q. All right. In other words, the same showing for the fiscal years— A. Yes.

Q. —would apply? [3038] A. That is the only one I did that with, and it is rather confusing here. I just split them in half, and it shows twice there.

Q. All right. Since we don't have this in a blown-up form, would you please start from the top and read these columns as to the two fiscal years? A. All right. The first one I will take is Champion Fleet Service, that is our company station at Vancouver.

Q. All right. A. The first period of time of the first year, '55 through '56 is the first year, 417,259. The second year 391,025.

Q. (By Mr. Hall) Go on to your next one then? A. The next one is Don's Champion Station, 146,654; the second year, 127,107—

[3039] Q. (By Mr. Hall) Go ahead. A. The next two do not represent a full year in either case.

Q. Well, you skipped Don Fraser, but that is because—  
A. Yes.

Q. —because you did it before. All right. A. Yes. Perkins Oil of Roseburg would be the next one.

Q. All right. A. That shows that has operated during the full two years.

The Witness: I will be glad to read all of them. I should put in Interstate Services in here, and they had 28,013 during the first year and none in the second year. Burt Pepper, the first year, was 17,648 and the second year [3040] 148,611. Mr. Pepper started with us in 1956, September, and that was one month before the first year started, so that is the reason I didn't feel that it was applicable to read. Perkins Oil Company of Roseburg during the first year, 498,758. The second year, 361,988. R & H Champion Fleet Services in Centralia, that is Erv Helgeson's place, 362,215; the second year, 181,540. Sam Cremedas in Camas, 15,037 the first year; 14,801 the second year. Malloy Fuel, this is also one that didn't complete a full period, 5,991 in the first year and 500 in the second year. Twin Cities Oil Company, 748,957 the first year; 580,249 the second year. Hussey Heating Oils; he was only in for a



period in the first period of 139,875. He didn't operate in the second period. I mentioned the Don Fraser. I have him repeated with the same numbers as before. Holleman Motor Company, 299,022; second period, 274,612. Barcus Sales and Service we do not have individual account records for the first year because he was delivered out of a local branch down there; but he, the second year he had 111,901. T & R Service, 35,801 the first year. 45,154 the second year. He did show some gain. Myrtle Point Oil Company, 170, 187,283 the first year; 204,722 the second year. Mid-Oil Company—

Q. (By Mr. Hall) Pardon me. He also showed some gain? A. Yes, he did. He showed some gain.

[3041] Q. If you get to any more where they showed gains, make a point of it and check it off. A. Fine.

Q. All right. A. Mid-Oil, 385,886 the first year; the second year, 60,690.

[3073] Q. Now, might I ask you whether there is a direct relationship between the volume of gasoline sold and the volume of heating oils and the T.B.A., etc.?

Mr. Hilliard: Well, your Honor, I would object to that conclusion of the witness.

The Court: You may include the heating oils. I would permit that question but not with reference to the T.B.A.

[3074] A. Yes, in our business, particularly, there was a direct relationship. The great majority of our heating oil business was sold through our gasoline distributors. In other words, they sold heating oil as well as gasoline. When they quit purchasing gasoline, why, they quit purchasing heating oils at the same time. In other words, they wouldn't quit us and buy gasoline from somebody else and continue to buy our heating oils. So the heating oils in our business was a companion sale so as to speak.

[3243] Q. Now one other question—there is some record here as to margin and I see the margin less Perkins' total margins.



Margin is sometimes used to mean the difference between one's cost or the price one pays for an article and the price that one charges for an article, is that what you meant by a margin in this instance? A. No, margin in the oil business is your discount below the posted tank wagon price.

[3285] Q. (By Mr. Hall) May I ask you if you know of your own knowledge what Standard Oil Company of California's market [3286] position was relative to the total Northwest retail market during the claim period? A. Yes.

Mr. MacLaury: I object.

Mr. Hall: He said yes. Then I will ask you what it was.

Mr. MacLaury: I would object, Your Honor, to this witness giving his opinion as to the market position of the Standard Oil Company in the Northwest, and I secondly object on the grounds it is immaterial.

The Court: May I have the full question so I might get it entirely.

(Whereupon the reporter read the previous question.)

[3287] The Court: Well, of course, we don't know what he is going to tell us is the date at which he forms that conclusion or bases that information upon, if he says "Yes". Now, he can tell us if he will what information he has.

Q. (By Mr. Hall) What would be the basis of your making the affirmative answer, which you just made?

A. All right. On one basis of what Standard has told me.

Q. All right. A. And in particular reference to Mr. Burns.

Q. All right. A. Another reference, that I have watched consistently by the month where the respective positions in the industry are such as Oregon, Washington, as to their taxable gallons, taxable gallons on these records or tables were issued by both the states of Oregon once a month, Oregon and Washington once a month.

Mr. MacLaury: Well, your Honor, as to the first basis,

of course, Mr. Burns had no authority to tell this witness or anybody else what Standard's position in the Northwest was. Mr. Burns wasn't acquainted with the market in the Northwest principally himself, and, secondly, these documents [3288] he has referred to, these tax reports are hearsay.

The Court: The material itself will be acceptable.

Mr. Hall: May I ask the witness to give his information, your Honor?

The Court: I think we ought to have that material rather than have a second chance at it.

Q. (By Mr. Hall) Specifically, are these reports which are here in Court, the two? A. Yes, I believe that they have been introduced. I think one of them is blacked out, but they were in Court.

Mr. Hall: I will get the exhibits on those, your Honor, here during the recess; but, may I ask him then with regard to Mr. Burns, what Mr. Burns' position was and so forth?

The Court: Yes, you may.

Q. (By Mr. Hall) All right. Mr. Burns' position with Standard was what? A. Mr. Burns was Regional Manager for the Oregon Division.

Q. And it was your statement that his statements to you were a basis for information you had as to Standard's comparative market position of the Pacific Northwest? A. Yes, sir.

Mr. Hall: Then I would like to ask what Mr. Burns told him, your Honor.

Mr. MacLaury: The same objection, your Honor. May I say, does your question in regard to Mr. Burns apply to the [3289] Oregon Division?

The Court: Maybe that is all he is going to ask him about.

Mr. MacLaury: His question would be what about the situation in the Northwest?

The Court: The witness has to take the question as he finds it. It is only the question that gives information.

Mr. MacLaury: And a further objection on the grounds previously stated.

The Court: Overruled. He may tell us.

The Witness: Mr. Burns told me, Lee and Jerry and I—Lee Powell, Jerry Harris, and I that Standard Oil did nearly 30 percent of the total volume in the Northwest.

Q. (By Mr. Hall) Now, this related to what, the claims period? A. Yes.

Q. Give us the time; when did he tell you this? A. This was—we had a meeting with him in '56. I don't remember. I think it was before the '56 contract was signed, and we requested a meeting to go to San Francisco; and he arranged for the meeting, and we had to write a letter, first, in order to acquaint the San Francisco people with what we wanted to talk about.

Q. Is that—go ahead. A. One of the things we wanted to discuss was the declining [3290] gallonage, and so this was a very pertinent question. We asked Mr. Burns what their position was and what our percentage of Standard was.

Q. All right. May I ask— A. This question had been asked several times of Standard.

Q. Now, I will ask you what the question, what the answer to that question was, your percentage of Standard in the Pacific Northwest?

Mr. Mac Laury: I have the same objection.

The Court: It will be overruled. He was told about the situation. The jury can give it such weight as they desire.

A. Mr. Burns answered the question in this way, Mr. Hall: That Champion represented about 17 percent of the gallons that were sold by Standard in the Oregon Division, which are Western and Central Oregon and up into Washington as far as Toledo, which I believe is their breaking line. He didn't give me the figures on the area north of the Seattle district.

Q. Now, Champion— A. This is Champion's percentage.

Q. Champion is the group you just mentioned? A. Perkins, Powell and Harris, the two Harris companies.

Q. What is the Perkins percent of the Champion group?  
 A. We had a little over 50 percent of it.

[3308] (Whereupon Plaintiff's Exhibit No. 93-B, [3309] Chart, was received in evidence.)

Q. (By Mr. Hall) Mr. Perkins, would you explain to the jury 93-B?

(Witness marks easel.)

The Witness: This represents a chart which shows our sales of gasoline. This includes regular and Ethyl. They are added together for the years 1955 and '56 and '57. And they are calendar year sales of both the Oregon and Washington sales. In the year of 1955, we sold 7,471,386 gallons during that calendar year. The next calendar year we sold 7,122,224 gallons. The third calendar year, 1957, of which I hope you can read my corrections, we sold 6,493,773 gallons.

[3310] The Witness: Now, we did sell—after the 4th, we sold a number of uncontrolled accounts of gasoline that we purchased from Westway. However, most of the service stations that Westway took over, they supplied them, and the gallonage does not show up here for the last twenty, twenty-five days of December. This is—

Q. (By Mr. Hall) Pardon me. Now, this is related to a whole year's figure there? A. This is in relation to a whole year.

Q. Right. A. He is referring to the last twenty-five, twenty-six days of December.

Q. Now, would you relate that to the other— A. This represents the maximum number of gallons that Perkins was—was allocated out of the Standard contract between Perkins, Powell and Harris. This is the total number of gallons that could have been obtained from the [3311]

Standard contract if Standard delivered the maximum quantities in the contract and the Champion group were able to divide the maximum quantities. In 1956 the contract was redrawn, and because the volume of the Champion group was so far below the 10% increase that would go on the contract maximum, Standard reduced the maximum on the new '56 contract to 12,384,000, and then it was subject to a 10% increase up to this figure if we would have sold this much in '56. That's why this line—this has no bearing on the case except that I put this on here just in case somebody would wonder whether or not Standard would have been required to deliver us gallons if our chart had gone this way. So it's of no other interest than that.

[3334] Mr. Hall: Can we take 93-C for the Court? 93-C for the Court.

The Witness: It's the next one.

Q. (By Mr. Hall) Mr. Perkins, would you identify for the Court what you have there and what the source for the information is? A. Yes. This is an identical chart to the one on gasoline except this represents our fuel oil sales for the year of '55, '56, and '57. I have not put on this chart anything relative to the Standard contract maximums which was available. There was sufficient quantities under the Standard contract to meet considerably more sales than these. This merely shows our sales—a graph of our sales for these three years involved. Those sales are from the same source of material that the gasoline sales are from. I forget the—

Q. 93-B-1? A. 93-B-1. I forgot the exhibit number.

Mr. Hall: Your Honor, we are offering 93-C in connection with this witness' testimony.

[3335] (Whereupon Plaintiff's Exhibit 93-C, chart, was received in evidence.)

Q. (By Mr. Hall) Mr. Perkins, would you turn this thing around for the jury to look at now. A. Yes, sir. (Witness



turns chart around) This is a graph and a chart of our sales of fuel oils. That's stove oil, diesel fuel, and furnace oil for the years '55, '56 and '57. In the year of 1955, we sold 4,463,203 gallons according to our sales records. For the year '56, we sold 3,600,485 gallons. In the year of '57, our sales were reduced to 2,468,172 gallons.

[3359] The Witness: Mr. Hall, I might better explain this if I would refer to 93-0 where I got that figure.

Mr. Hall: All right.

The Witness: And then so long as there might be a confusion of the wordage. This is a graph of the amount of rents that were the difference between the rent that we paid out to lessors and the amount collected from lessees, the service station operators and so forth. For the year 1955, the two corporations paid out \$37,247.00 and they collected back from those same properties \$30,498.00; and this made a total difference between what we collected and what they paid out of \$6,749.00 for this year. The year '56 the rents paid out were \$51,842.00, and the rents collected were \$35,627.00 or the difference between those of the rents collected and the rents paid out for \$16,215.00. In other words, there was this much more paid out than was collected. In the year of 1957 I don't have to repeat all these other figures for you. There was—well, I can. The rent paid out, \$51,381.00, and the rents collected were \$32,115.00 or a difference of uncollected rent of \$19,266.00 for the year [3360] of 1957.

Q. (By Mr. Hall) When you say "uncollected rent," in whose favor is this uncollected rent; whom are we talking about? A. These are the two corporations. They paid out \$19,266.00 more rent than what they got back.

Q. I am referring to—I realize what their rent, what they paid to and so forth; how did you make your rent allowances and to whom? A. Well, it was to service station operators, various, various ones.

[3364] Q. (By Mr. Hall) Mr. Perkins, what was the physical condition of your service stations in nineteen—I am going to go through the three years, 1955, '56, and '57; you go by [3365] area; let's take Perkins Oil of Oregon or Perkins Oil of Washington and unless the statement would be the same as to Idaho; what was the physical condition of your stations in 1955 in Washington? A. Well, we did—Mr. Hall, we didn't divide. I couldn't say between Washington and Oregon.

Q. All right. A. We attempted during the years of '55 and '56 to keep our stations in a presentable condition. We painted our stations every two to three years and oftener if it was necessary. We tried to keep them well maintained, tried to keep the canopy lights in good condition, those neon signs operating, and repairs to drive-ways, roofs, and everything else that is necessary to have a presentable business. Our expenses that we have listed on 93-0 represents an accumulation of our total operating expenses. However, in this figure of expenses represents our service station maintenance and painting and so forth. In the year of '56 our total expenses was \$222,834.00. In the year of '57, we reduced our overhead to \$175,851.00. This is a reduction of some \$45,000.00 which was largely due to reducing our paying program, our maintenance, and of course there was a matter of personnel that we had to reduce at that time, too. We also eliminated our credit cards that we handled. We had our own credit cards. We eliminated those during this next [3366] year.

[4110]

Stanley D. Kummer

was thereupon produced as a witness in behalf of the defendant, and having been first duly sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

Direct Examination

By Mr. MacLaury:

Q. Mr. Kummer, where do you reside? A. I reside at 4618 S. W. Othello, Seattle, Washington.

[4111] Q. By whom are you employed? A. I am employed by Western Operations, Standard Oil Company of California.

Q. And at the present time where is your place of business? A. I am assigned in Seattle, Washington, but I work out of that office in our territory.

Q. How long have you worked for the Standard Oil Company of California? A. I started out in 1938 as a service station salesman in the 39th and Sandy here in Portland, so that would be, oh, twenty-five plus years. Twenty-five and a half.

[4376] Cross Examination

By Mr. Tilbury:

[4431] Q. (By Mr. Tilbury) Now, Mr. Kummer, is it not also a fact that during one year alone the Standard Oil Company paid the Signal Oil and Gas Company a subsidy payment of \$618,363.27 in one year alone?

[4432] Mr. MacLaury: Your Honor, I have an objection to the question unless counsel can define what he means by the word "subsidy".

The Court: Well now, I don't know. He is placing a leading question to this witness that that figure is not included in his schedule. If that is what he is implying, it would be proper. It would be proper. If he is merely taking an addition of what this schedule shows and asking this witness to confirm it, he is flying in the face of the rule of the Court, and I will have to deal with it at a later time.

Mr. MacLaury: State your purpose, please, counsel.

Mr. Tilbury: Yes, sir. My purpose is simply to show Signal Oil and Gas Company received a subsidy in excess of \$600,000.00 in 1957 alone.

Mr. MacLaury: Which is not reflected in this schedule.

Mr. Tilbury: Yes, sir, that is right. It is not reflected at least as far as this witness has indicated, no subsidies shown, as I understand it.

The Court: If that is the question, you may inquire of the witness.

Mr. MacLaury: We have a problem dealing with the word "subsidy".

The Court: If the witness doesn't follow, he can ask for clarification.

[4433] Q. (By Mr. Tilbury) Is the question clear, Mr. Kummer? A. No, we have discussed your subsidy before, your phraseology; and I understood it to be equivalent to retail price assistance as shown in Exhibit 1448. Are you now referring to some other matter?

Q. I am just merely asking. Let's call it retail price assistance; do you show anything like the amount that I have given you that is in excess of \$600,000.00, whether we call it a subsidy or we call it a retail price assistance or whatever name you wish? A. Retail price assistance in my opinion refers to perhaps service stations, as you have indicated Grace Oil. This subject to which you are referring, if I understand the connotation, refers to additional allowances or discounts which have not been stated to be retail price subsidies by me.

Q. I am not asking you about subsidies now; I think I am using the term—

Mr. Tilbury: May we have box 85D, please, which I think is on the top there on the left-hand side, Mr. Buchanan. I think it is the top box on the left-hand side at the back.

(Whereupon, the box of documents was delivered to counsel.)

Mr. Tilbury: Yes, may I see that for just a moment.

[4434] (Pause).

Yes, would you hand this to him, Mr. Buchanan?

Mr. MacLaury: May I see that, please?

(Whereupon, the document was handed to Mr. Mac Laury.)

Q. (By Mr. Tilbury) I will ask—

Mr. MacLaury: Your Honor, now, if counsel is going to use the word "subsidy", I think in the light of the exhibit



that I have just seen, he should define precisely what happens because it is being used—in that folder, it is being used as retail price assistance in two different ways.

Mr. Tilbury: Well “subsidy” is the term used by the Signal Oil and Gas Company. I can’t very well interpolate what they meant by the term “subsidy”.

Mr. MacLaury: May I ask your Honor to look?

The Court: Let’s see what this question is and I will know what to look for.

Mr. Tilbury: If I might approach the witness, I think I can—

The Court: You may.

Mr. Tilbury: —show him what I mean.

Q. (By Mr. Tilbury) Referring you, Mr. Kummer, to what has been marked in this case as 85, one of the journal vouchers, as it is called, from Signal Oil and Gas Company, marked as 85D, dated December, 1957; and calling your attention particularly to the journal voucher, No. J-1235, [4435] dated December, ’57, I will ask you if it does not appear that there is a notation on that page to adjust liability, Standard Oil Company, for 1957 purchases of motor gasoline resulting from an under accrual of subsidies computed at sixty-five cents per gallon purchased, subsidy credit allowed; \$618,363.21; subsidy credit approved, \$570,896.82 with a line underneath it, \$47,466.39?

[4436] Mr. MacLaury: Now, Your Honor—

Q. (Continuing) Now, does—

Mr. MacLaury: The question proposed—

Mr. Tilbury: I haven’t proposed it yet.

Mr. MacLaury: All right.

Q. (By Mr. Tilbury) I am merely asking whether this entry refreshes your recollection of the incident in question and whether there was, in fact, some sort of subsidy which you may have forgotten about and did not appear for some reason or other in your schedule? A. This schedule, and Exhibit 1550 with the blow-up as 1551, the original document 1550 I will again read: “In January, 1957, a payment



was agreed upon and made by Standard to Signal Oil and Gas Company upon the basis of sixty-five hundredths cents per gallon of gasoline delivered by Standard to Signal Oil and Gas Company during the period 8-27-56 through 12-31-56."

Q. All right, Mr. Kummer. Now, that date— A. Now, this—

Q. Pardon me. A. Now, it is purely—in this particular document of Signal Oil and Gas, for whom I have never worked, I do not know their terminology, and again the same figure of sixty-five hundredths cents per gallon appears.

Q. Mr. Kummer, the date you just read us, I believe, was [4437] January—

Mr. MacLaury: Just a moment, counsel. Have you finished your explanation, Mr. Kummer?

The Witness: The amounts appear to be exact, in agreement. Maybe it is a coincidence.

Q. (By Mr. Tilbury) Well, isn't there— A. Now, if Signal Oil and Gas refers to the item that I have placed upon the footnote as a subsidy, then this footnote is correct and is, well, the basis of this document. If they are using the term subsidy in some other connection, and there is no—it is just a coincidence that these agreed—

Q. Mr. Kummer, isn't there an eleven month separation between those two items? Isn't the one that you read us from your schedule dated January, 1957, and the one from the Signal Oil and Gas Company dated December of 1957? Would you read those again and be certain? A. On dates, yes. But this appears to be some type of journal correction entry and it doesn't stipulate exactly what period. If these are identical, if they are talking about the same item, then they indicate that this was in 1957, which corresponds to the note. I am not familiar with Signal Oil and Gas Company's journal vouchers—

Q. Well— A. —nor am I familiar with their accounting procedures.

[4438] Q. What is the date—

Mr. MacLaury: Your Honor—just a moment, please, Mr. Tilbury. Your Honor, may I ask the Court to examine this document, and then I would like to make a statement with respect—

The Court: Well, he was asked to take that into consideration on whether or not it refreshed his memory, and he has told us that it doesn't.

Mr. MacLaury: It was read aloud.

The Court: I understand it was read aloud by counsel and the jury understands that this is not a matter of evidence. It is not in evidence. Counsel's statement is not in evidence, and it reverts back to the same proposition that we talked about the other day. When we make reference of some outside thing in existence, that may or may not remind us of something that we had forgotten about. That is all that that was used for. Disregard the language of the exhibit referred to as being the papers of Signal Oil.

Mr. Tilbury: May we have that chart, please. Just a little closer.

(Bailiff brings chart over.)

Mr. MacLaury: May I—

Mr. Tilbury: Well, counsel, I think—

Mr. MacLaury: I would just like to see the document before the witness gets to it, if I may. May I have that,  
[4439] Mr. Bailiff.

(Bailiff hands document to counsel for defendant.)

Mr. Tilbury: Well, let's see. I don't want to block anyone.

(Counsel Tilbury moved blackboard over.)

Mr. Tilbury: Have you completed your examination, Mr. MacLaury?

Mr. MacLaury: Yes, of this document here.

Mr. Tilbury: If that could be handed to him again.

(Bailiff hands document to witness.)

Q. (By Mr. Tilbury) Now, Mr. Kummer, I would ask you, please, what is—on your exhibit, you have down on the lower left hand corner, I believe, the date of January, 1957; is that not the case? Can you see it from there?

A. That's a blow-up of a copy I have here (indicating). In January, 1957.

Q: All right. A. That is the first line.

Q. Yes. Now, on the document that you read or that I indicated a minute ago—

Mr. MacLaury: That you read.

Q. (By Mr. Tilbury) That I read, right. The document that I read from, what is the date on that cover? A. The heading is, "Journal Voucher, Signal Oil and Gas [4440] Company, date, December, 1957."

Q. All right. Now, would you look at the other journal vouchers from the Signal Oil and Gas Company and tell me, please, if there are entries for each of the months during 1957 that appear there that are somewhat similar to that?

Mr. MacLaury: Your Honor, I would object to further questioning on these documents that are not in evidence.

The Court: Yes, the witness has been handed something that he has not testified about.

Mr. Tilbury: I have offered these, Your Honor.

The Court: There is no line of inquiry from him concerning these. He hasn't vouched for it nor said he knows anything about it.

Mr. Tilbury: Your Honor, I have offered these documents, and I will certainly again offer them. I feel they are important. Any time—

The Court: Not through this witness.

Mr. Tilbury: Pardon me?

The Court: I say not through this witness. He knows nothing—

Mr. Tilbury: Well, not unless he knows some information, I think that is true. But I want to state that I had made an offer of them.

Mr. MacLaury: Well, Your Honor—

The Court: My records don't show that. My records [4441] show that 85-A, B, C, and D were received as being supporting data.

Mr. Tilbury: Mr. Shepard's—

Mr. MacLaury: And not, Your Honor, in the Portland area.

Mr. Tilbury: No, I am prepared to make a breakdown on that. Your Honor, I think they were identified in connection with Mr. Shepard's deposition which has been read in evidence. My impression was that all of Mr. Shepard's deposition was read, together with the information that he sent to us in the form of these boxes.

The Court: Well, I will have to review my record, but my indication is that they were identified and either that they are to be tailored as to area or as to date, something of that nature. I will have to check the record.

Mr. Hilliard: Yes, Your Honor. There was much testimony that was beyond the entire—beyond this area that covered the West Coast's entire operation. And in the reading of the deposition, those areas were excluded by counsel.

Q. (By Mr. Tilbury) All right. I will ask this question: Mr. Kummer, is it not a fact that during the years of our claim, that over 10% of the overall Signal Oil and Gas gallonage which they purchased from the Standard Oil Company was purchased in the Pacific Northwest; that is, Oregon and [4442] Washington? A. I have no knowledge of any such figures.

Q. All right. Now, would you know, from having looked at the various documents which you have identified, that, in fact, in 1957, during the latter part of '57, the adjustment was not sixty-five hundredths of a cent but in fact was three quarters of a cent? If we might have 23-C, I think it might be helpful. For example, from July 1, '57 to December 31, '57, I believe the adjustment to have been in the neighborhood of three quarters of a cent and not the sixty-five hundredths of a cent. (Bailiff hands exhibit to witness) On page 28-A, I believe it is, of 23-C, I be-



lieve you will find the dates of the adjustments as indicated by Standard's answers. A. This is on 23-C?

Q. Yes, sir, paragraph D. A. It does state some figures in there. However, I do not recall using these figures on this particular format in connection with this—

Q. All right. A. —schedule 1550.

Q. Mr. Kummer, now, this document has been received in evidence. Would you read for us, please, the amounts in cents per gallon of adjustments extended to the Signal Oil and Gas Company by the Standard Oil Company during 1957 as [4443] they appear on Standard's answers to interrogatory 23-C. A. For the period 1-1-57 to March 31st, '57, sixty-eight hundredths of a cent. For the period of 4-1-57—

Q. Pardon me, Mr. Kummer. I think we have got the account in the wrong place. I believe it is—I know it is a little confusing, but I believe it is sixty-six hundredths of a cent for the first three months. A. Oh.

Q. Do you see what I mean? A. Yes. For the period of 1-1-57 to 3-31-57, sixty-six hundredths. For the period 4-1-57 to 6-30-57, sixty-eight hundredths, for the period of 7-1-57 to 12-31-57, seventy-five hundredths.

Mr. MacLaury: Your Honor, to assist the witness in this testimony, may I hand him Exhibits 1550-C-1 and C-2 which counsel suggested be put in evidence this morning and which is a further breakdown of the schedule 1550.

Mr. Tilbury: I have no objection.

The Court: You may hand it to him.

(Bailiff hands exhibit to witness.)

Q. (By Mr. Tilbury) Mr. Kummer, on the—well, I will give you the chance to look at these, if you wish, or perhaps you don't need the additional time. Is it not a fact that on the figures that you have been reading for us there is no time during 1957 as indicated where the adjustment was in the amount of sixty-five hundredths of a cent? In other words, it was sixty-six hundredths to three quarters of a cent? A. For the period on these exhibits, 1550-C-1 and 1550-C-2, for the period of 7-1-57 through 12-2-57, the adjustment is shown as seventy-five hundredths.



Q. Now, if there were an adjustment of sixty-five hundredths of a cent during 1957, this then would have to be something other than those that have been indicated; is that true? I mean if an adjustment had been made by Standard, I am asking you to assume such a fact, in the amount of sixty-five hundredths of a cent, would that not have to be something which is supplemental at least to those that you have read for us which vary from sixty-six hundredths to three quarters of a cent? A. I would not say supplemental. It is indicated on the combined schedule and on these schedules the statement that the sixty-five hundredths was rendered in January, 1957. It's on the footnote on that chart or schedule. It's on these individual ones, the sixty-five hundredths of a cent to which you refer (indicating).

Q. I realize that, but the date that I thought you had indicated was January of 1957 and not December of 1957? A. What date is that—

Q. The date— [4445] A. —to which you have reference?

Q. The date that I have reference to was the date that appears on 85-D where the entry subsidy credit in the amount of over \$600,000 appears in the amount of sixty-five hundredths of a cent. Is that not something, sir, which is dated in December whereas the entry that you have on Exhibit 1551 is stated to be January? A. I do not have any exhibit in front of me with \$600,000 on it.

Q. Well, I don't know where it is at the moment. It is 85-D, wherever that is.

Mr. MacLaury: Well, that is not in evidence, Your Honor. Counsel is again reading from a document that is not in evidence.

Mr. Tilbury: Well, I thought it was, but I will certainly offer it in evidence. There is no mystery about it.

Mr. MacLaury: Well, we would object to it because—

The Court: Well, he is entitled to have the Court deal with it at least. What do you want; 85-D?

Mr. Tilbury: Yes, sir, that's right. That was the box of the Signal Oil and Gas Company. I will separate out

the part. It doesn't matter, but I would certainly think it—the one we had reference to was the one in December, 1957. It is marked 1235 in this box from the [4446] Signal Oil and Gas Company, a folder. There are some additional folders for the other month, I think with the exception of one month which doesn't appear to be here, but all other months are here. Perhaps rather than offer it in mass, I could offer those individually. If they could be marked in some way.

The Court: Well, this witness is not the appropriate witness or vehicle to use for a re-offer of these exhibits.

Mr. Tilbury: All right, sir.

Q. (By Mr. Tilbury) Well, in any event, just to—without going over the same ground, there is no entry here showing that an adjustment or subsidy credit had been given to Signal Oil and Gas Company in December of around sixty-five hundredths of a cent? That would not appear on your schedule; is that true?

[4447] Mr. MacLaury: That is an improper question. There is no evidence here—it is a hypothetical question not based on any evidence in this case.

The Court: It is his theory, at least, and it goes to find out, so far as the plaintiff's theory is concerned what the data is. The witness can tell us whether or not it is a fact that he used.

Mr. MacLaury: Your Honor—

The Court: Whether or not the factor was or was not used makes any difference has to determine on something else—

Mr. MacLaury: Yes, I appreciate Your Honor's thought but my position is that there is the implication by counsel's statement of the fact that the fact did exist and there is no evidence of that and it is a hypothetical question based not on any evidence produced in this case. It assumes something which—

The Court: I didn't take the question to be such. May I have it?

The Reporter: Your Honor, the other reporter had it.

The Court: Very well. Whether or not counsel asked the witness to assume to be the fact makes no difference, as I understand it. All counsel needs to ask him is whether or not this schedule took into consideration any factor of certain amounts of discount or whatever it was. The witness [4448] can say "yes, it did," or "no, it didn't."

Q. (By Mr. Tilbury) Did your schedule reflect—

The Court: Members of the jury, each counsel wants the other counsel to speak in his words and unfortunately the game doesn't go that way, and by the same token counsel is very astute, as both counsel are, can very often give an impression by their questioning, which would not elicit from a witness, and while it isn't quite as crude as the famous old statement "Are you still beating your wife," it is something like that, it is an astute question to say the least. Bear in mind, gather no inferences whatsoever to the form of question that counsel may ask. This counsel is entitled to know whether or not this rather complicated, and I think we will all agree, schedule and its foundation takes into consideration a given factor or not, and the answer is "Yes, it does," or "No, it doesn't." Whether or not that makes any difference must depend on some other evidence in the case and not what counsel says.

I will sustain the objection to the question as it is now worded and let counsel reframe his question without making any assumption.

Mr. Tilbury: Well, I think perhaps the point has been made so I won't rephrase it.

Mr. MacLaury: That is precisely my point. The point is made, Your Honor.

[4449] Mr. MacLaury: Your Honor, I would like an opportunity to take up with the Court this line of questioning on the Signal Oil and Gas figures, at the Court's pleasure, tomorrow morning or any other time.

[4496]

Donald Carter

was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. MacLaury:

Q. Mr. Carter, where do you reside? A. At 7126 North Williams here in Portland, Oregon.

Q. Now where do you work? A. I work in the regional office of Standard Oil Company here in Portland, Oregon.

Q. How long have you been employed by Standard, Mr. Carter? A. About seventeen years.

[4497] Q. Now, you testified that you were in the Pricing Section? A. Pricing Section, right, from 1955 or prior to that time, actually, up to 1957, the claim period.

[4500] Q. Now, are you familiar with the procedures the Standard Oil Company uses in its marketing organizations for making price surveys? A. Yes, I am.

Q. Would you describe that generally for the jury. A. We have through the claim period, we maintained a large sheet of paper wherein we listed all of the localities throughout our marketing area and listed our own stations at the top usually, or if it was a Chevron station down amongst the competitive service station, we listed all of the addresses involved and then as a price condition arose [4501] or the price started to fall off or signs indicated some disturbance in a given area, our retail representatives, whose normal duties would either be—see it themselves or when the station would call it to their attention, he would then make a survey. He had an identical list, a sheet just like we did. We made them in duplicate. He took a complete survey of all of the stations involved and then transmitted that information immediately to our office

where I or one of the other fellows would record this information down exactly as given. We would then take it to our management for their review and the recommendation would be sent to San Francisco by wire, or usually by phone, and then we awaited their decision in the matter.

Now, our retail rep, our personnel who take these surveys—prior to entering that job, they are people who probably spent four or five years working in a service station; they are people, therefore, who have experience with price conditions, as such, in the service stations, the various jobs that they held after that qualified them to go on for this position. After being made a retail representative, they then spent anywhere from two weeks to a month, depending on the job they held, riding with another retail supervisor to get acquainted with all of the various duties involved. After that period of time, they went to our San Francisco office where they attended a seminar for further instructions.

[4502] Q. (By Mr. MacLaury) (Continuing) By a "retail rep". You mean by that a retail representative? A. A retail representative.

Q. A retail representative. Now, you have described how the price survey was taken; would you explain to the jury—you mentioned a large sheet of paper. Would you explain to the jury what kind of information is put on that large sheet of paper and how it is organized? A. Well, as I stated, the localities are listed on top, and we have identification, a letter we are using, and then all the stations are listed down in that given locality. This locality is set up by the retail representative. What he does is go out into a certain area where we have a station and take the stations that would really affect our station and have an impact upon our gallonage were they to drop their price, and that is what we then set up as a locality, and we draw a map in accordance with those boundaries; and he surveys those individual units. That is the information we record.



Q. How is this information recorded on the large sheet, and what is put down there? A. We put down—(Interrupted)

Q. I suppose the station address and date? A. Right. The date that as of the date he takes the survey. We list that on the top. Then we put down the regular [4503] gasoline by date right across, and he takes a complete survey. No changes are made. We just make a dash or if there is no survey, we might just make a line right on down showing on that date nothing had changed. All the information we had prior to that date remained the same.

Q. And do those surveys actually show the prices on the pumps? A. That's right. That is what they are.

[4557] Q. (By Mr. MacLaury) Now, before we go to those exhibits, just a few questions, Mr. Carter. Were any price surveys ever made by Standard in the City of Vancouver during the period 1955 through 1957? A. No.

Q. Are price surveys such as we have shown—such as you have testified to here in connection with 1682 ever been made when there is no price war or depressed price situation? A. None. They keep an accurate check of prices, but if there is no depression, then there is no survey made.

Q. Now, was there any retail price assistance extended to Chevron dealers in the Vancouver area during '55, '56 and '57? A. None whatsoever.

[4558] Q. Is price assistance always extended—was price assistance always extended during the period of the middle of '53 through '57 in Vancouver and in Portland during times of price wars? A. Yes.

Q. Was it ever extended when there wasn't any price wars? A. Never.

Q. Why didn't you take any price surveys, or why didn't Standard Oil Company take any retail price surveys in Vancouver during the period '55, '56, and '57? A. Because the prices were never depressed in Vancouver during that period.

[4737]

**Ross R. Grover**

was thereupon produced as a witness in behalf of defendant, and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. MacLaury:**

Q. Mr. Grover, where do you reside? A. I live in Sacramento, California.

Q. 2781 13th Street? A. That is correct.

Q. What is your business? A. I am a C.P.A. Certified public accountant.

Q. Do you have an office in Sacramento? A. I do.

Q. Are you associated with some firm? A. Yes, it is a partnership. There are five partners. The business is known as Atkinson, Grover & Company.

Q. How long have you practiced as a C.P.A.? A. Approximately twenty-one years.

Q. So you became a certified public accountant sometime in 1942 or 1943? [4738] A. That is correct.

Q. Are you the auditor for Western Hyway Oil Company? A. Yes. We have been auditors for Western Hyway Oil Company since 1954.

Q. And are you also the auditor for the corporation known as the Regal Stations Co.? A. That is correct.

Q. Now where is the head office of Western Hyway Oil Company? A. Western Hyway Oil Company's principal office is in West Sacramento, California.

Q. Can you describe generally the business of Western Hyway Oil Company? A. Western Hyway Oil Company operates a fleet of tank trucks and also has marine terminal on the Sacramento River in which they receive barge loads of petroleum products and distribute those to other jobbers and retailers throughout Central California, Western Nevada, and Southern Oregon.

. . . . .

[4739] Q. With respect to the years 1955, '56, and '57, what entities or what persons owned the stock, the capital stock

in Western Hyway Oil Company? A. In Western Hyway Oil Company sixty per cent of the shares were owned by Signal Oil and Gas Company and forty per cent was owned by three individuals who were corporate officers.

Q. All right. Now, Regal Stations Co., where was that [4740] incorporated? A. It is an Oregon corporation and it was incorporated in 1956. It began operations in 1956. It is an Oregon corporation.

Q. Now, what was the business of Regal Stations Co.? A. Regal Stations Co. is the operator of what grew up to be a small chain of retail gasoline stations.

Q. And is that the company that operated the three Regal stations in Portland? A. That is correct.

Q. From September or October, '56, on through '57? A. That is right.

Q. Now who owned the stock in Regal Stations Co. from the time it was incorporated in Oregon until the end of 1957? A. At the outset, at the date of incorporation fifty-five per cent of the shares of Regal Stations Co. were owned by Western Hyway Oil Company, and forty-five per cent were owned by four or five individuals who had no other corporate relationship to either Western Hyway Oil Company.

In October, 1957, these individuals who held shares sold their shares to Western Hyway Oil Company, so that at that date Western Hyway Oil Company controlled one hundred per cent of Regal Stations Co. and they continued to hold it throughout the remainder of 1957.

[4743] Q. Now, you have referred to liftings from Willbridge. Will you amplify that as to what entity lifted this gasoline and what entity supplied it? [4744] A. Liftings from Willbridge where delivery was taken by Western Hyway Oil Company on a purchase from Signal Oil and Gas Company and taken during this period from the Standard plant at Willbridge, Oregon. The deliveries during this period were made to three stations of Regal Stations Com-

pany located in Portland, and there was one station of another entity known as Fortune, Inc. at Salem during a portion of this period. I believe it began April, 1957.

Q. All right. Now, do the prices indicated on 1512 apply to the date of the liftings, the date of the invoice, or as of what date; I notice there are some dates here? A. These dates are the dates of actual lifting as contrasted to any invoice date. Normally, the invoice date covering one or more liftings would follow the date of the lifting by as much as three to ten days because the invoices themselves were prepared in Los Angeles by Signal Oil and Gas Company.

[4764] Cross-Examination

By Mr. Tilbury:

[4766] Q. (By Mr. Tilbury) Now, I believe you indicated during the period of our claim that Signal Oil and Gas owned sixty per cent of Western Hyway, is that the percentage? [4767] A. That is correct.

Q. Did that continue to be true throughout the entire period? A. I think it did through 1957.

[4771] Q. By that amount.

Would you know, Mr. Grover, whether Western Hyway bought any products from any supplier other than Signal Oil and Gas Company in the State of Oregon, that is, in the northern part of Oregon, during our claim period? A. I don't think they did during the period of your claim.

[4772] Cross-Examination

By Mr. Hall:

Q. May I ask, is this Western Hyway a sixty per cent controlled subsidiary of Signal Oil and Gas during the [4773] claim period, is that correct? A. That is correct.

[4774] Q. (By Mr. Hall) I may have left out a verb or two. Would you kindly describe the Western Hyway in relation to Signal Oil and Gas Company. A. Western Hyway Oil Company served the function as a wholesale distributor, I suppose, would most clearly describe them, of petroleum products which made delivery to given retail units and also to subdistributors and jobbers.

Q. And it delivered through this flow you described into Oregon, is that correct, Western Hyway? A. That is correct.

Q. Now, you have also mentioned, I believe, I believe you mentioned the Regal Petroleum Company, is that correct? A. No, we didn't mention it at all.

[4775] Q. All right. You mentioned Regal Stations Co.? A. That is correct.

Q. Are you familiar with Regal Petroleum Co? A. Yes; indeed.

Q. What is the relation of Regal Stations Co. to Regal Petroleum Co.? A. No relation.

Q. Is Regal Petroleum Co. related to Signal Oil and Gas Company? A. Yes.

[4776] Q. (By Mr. Hall) Now, you described the Regal Stations Co., did you not, as operating various retail stations in Oregon, including the Portland area? A. That is right.

[4780] Q. (By Mr. Hall) I will ask does that refresh your memory as to whether or not Regal Stations Company was handling the retailing in Oregon? A. This happens to be the 1957 annual report of Signal Oil and Gas Company to its shareholders. The statement made here on page 20 indicates Regal Petroleum Company. Now, in 1957 there was no such organization to my knowledge, and I have been the auditor continuously since their inception of all of the Regal companies. It says "Regal Petroleum



Company, the retail marketing subsidiary with outlets," et cetera, et cetera, in multiple states. I think this statement [4781] itself in that shareholders' report is in error. It should be read "The Regal Companies" because they had dozens of them.

Q. That included Oregon, those states you mentioned, right? A. One corporation in Oregon, correct.

[5002]

Allen Lee Shepard

was thereupon produced as a witness in behalf of the defendant, and, having been first duly sworn, was examined and testified as follows:

### Direct Examination

By Mr. Hilliard:

Q. You are Mr. A. L. Shepard? A. Yes, sir.

Q. And where do you live, Mr. Shepard? A. I live in Los Angeles.

Q. And do you have any connection with the oil business? A. Yes, I do.

Q. What is that? A. I am manager of the subsidiary operations for Signal Oil and Gas Company.

Q. Signal Oil and Gas Company? A. Yes, sir.

Q. And that your offices are in Los Angeles? A. Yes, they are.

Q. Now, prior to your present position then in management of the subsidiary associations, what capacity did you occupy with the company? A. Prior to entering the marketing department, I was in the accounting department.

Q. As a result of your connection in the accounting department, you were prevailed upon to fly up here yesterday? [5003] A. Yes, sir, I was.

Q. I wonder if we may show the witness this box of exhibits, 85. It is under the desk right here, this table right here. (Illustrating)

Mr. Tilbury: By the way, would you separate out the Oregon ones. I think the Washington—I think they are in the other box next to it, if you want them.

Mr. Hilliard: May I go up—

Mr. Tilbury: I think there is another box too.

Q. (By Mr. Hilliard) Would you look at those records in front of you and tell us what they represent? A. This one I am looking at is for January, 1957, and is a journal entry setting up the cost of sales of gasoline for the month of January. It also sets up an adjustment to cost of sales which depicts an additional anticipated reduction.

Q. Let me see if I can follow you. I have only one copy here at the moment.

(Whereupon, Mr. Hilliard walked up to the witness stand.)

[5004] Q. (By Mr. Hilliard) Do you have an entry in ink; what do you call this, a journal? A. A journal, yes, sir.

Q. Any other classification, or just a journal? A. Just a journal, a journal entry.

Q. And what is the entry written in ink? A. This entry reads "To adjust motor gasoline cost of sales and liability to Standard Oil Company for estimated sixty-five hundredths per gallon recoverable pending final agreement."

Q. And the date of that journal is? A. For the month of January, 1957.

Q. And each of your subsequent months, would you check to see if you have a similar type of entry? A. Yes, sir.

Q. Looking at February, is the language—do you have a journal entry with the same language? A. Yes, it appears to be identical.

Q. All right. Would you check through each month; that is February you just looked at? A. That is February.

Q. And March? A. March. It has a similar entry.

Q. A similar amount as to the others? A. Sixty-five hundredths of a cent per gallon.

[5005] Q. And the language is an estimated sixty-five hundredths of a gallon? A. Yes, sir.

Q. Would you check to see if they are the same? A. This is the month of May, 1957. It has a similar entry, similar information.

Q. You say April comes under the theory? A. It has the same wording, the same amount.

Q. June is the same? A. Yes, sir, it is the same. Yes.

Q. September is the same entry? A. The same entries in September.

Q. October? A. The same entry.

(Whereupon, another document was handed to the witness.)

A. November, the same entry.

Q. Then December? A. December also has the same entry, yes.

Q. Now, you have there in each instance described that as "Estimated sixty-five hundredths of a cent per gallon adjustment," could you tell us why you use that reference to that term? A. Why we used that amount for this?

Q. Yes. A. Originally, we received an adjustment in the early part [5006] of January, 1957, which covered a prior period of nine months, I believe, and the adjustment at that time, the amount of money received divided by the number of gallons covered by the period computed to sixty-five hundredths of a cent per gallon, and we felt that this was a fair statement to use for my projected adjustments we might receive.

Q. As in the Accounting Department, did you know what the exact adjustment would be at that time? A. No, we did not.

Q. The exact workings of the formula? A. No, we did not.

Mr. Hilliard: There has been received in evidence—oh, excuse me. Could you hand the witness Exhibit 1550C-2?

The Clerk: 1550—

Mr. Hilliard: C2.

The Clerk: C-2.

[5007] Q. Now, on the third—you see the heading on this 1550-C-2. Is that the number on the exhibit you have?

A. 1550-C-2, yes, sir.

Q. And there is a Signal Oil and Gas heading under page of Ethyl gasoline. Do you have that in front of you?

A. Yes.

Q. Then there is a date column, the next column "Will-bridge Posted Price, ex Tax", then a column "Contract Discount". A. Yes, sir.

Q. Then the following column is adjustments, and you will note starting at 1-1-57, the adjustment shown is sixty-six hundredths of a cent per gallon. Do you follow that?

A. Yes.

Q. And that continues on through March 31, '57? A. Yes, sir.

Q. Then it is from April 1 through June 30th, '57, the adjustment is shown as sixty-eight hundredths cents per gallon? A. Yes, sir.

Q. Then from 7-1-57 through December 2nd, '57, it is seventy-five hundredths of a cent— A. Yes, sir.

Q. —per gallon. Now, do those figures represent the actual adjustment received by Signal Oil and Gas from Standard for those periods? [5008] A. Yes, they do.

Q. Can you tell the Court and jury whether this represents—the sixty-six hundredths that ultimately becomes seventy-five hundredths of a cent represents the total adjustment, or whether the sixty-five hundredths of a cent entry of yours in an additional adjustment? A. This rate showing here from sixty-six hundredths to three-quarters—seventy-five hundredths of a cent was a total adjustment.

Q. And you can state positively that the sixty-five hundredths was not an additional adjustment? A. Positively.

Q. You have a record entry showing year-end calculations that would represent the actual adjustment you received as reflected by this schedule? A. Yes, sir.



Q. Is that in one of the folders in front of you? (Counsel approaches witness) Now, when you have these monthly entries at sixty-five hundredths of a cent per gallon, that represents the rate at which you were accruing this charge against Standard? A. That is correct.

Q. And at the end of the year, did you reconcile your records to show the actual— A. Yes.

[5009] Q. —amount received? A. We adjusted our anticipated estimated amount to the actual amount received.

Q. And the actual amount received was based on these actual rates of adjustment as shown by the figures just read off on exhibit 1550-C-2? A. That's right.

Mr. Hilliard: You may cross-examine.

#### Cross-Examination

By Mr. Tilbury:

Q. Mr. Shepard, I would like to ask you one or two questions concerning this. Now, the figures that you have read for 1957, they start, do they not, during '57? I appreciate there was one that you indicated in January which was retroactive in nature or something. At least it went back nine months. A. Yes, sir.

Q. Now, the figure that you have during 1957, do those adjustments start at sixty-six hundredths of a cent and proceed upward to three quarters of a cent? A. Yes.

Q. And the figure you have in the journal vouchers are indicated to be computed at the rate of sixty-five hundredths of a cent? A. That is correct.

[5010] Q. Would you mind, please, telling me why the different figures appear on the journal voucher as compared with the other notations? A. The sixty-five hundredths of a cent figure we used in the monthly journal entries was an estimated amount on the recovery we might receive or allowance we might receive. And we used this figure constantly, knowing that there would be very little difference between this estimated amount and our actual amount, and it was adjusted annually.



Q. I see. So, in fact, when the final adjustment took place, it was raised to the higher amount, the seventy-five hundredths; is that the case? A. The total was not seventy-five hundredths, but for that particular period—

Q. Yes. A. —it would affect the overall adjustment.

Q. Yes. You corrected me, and I think that's right. In other words, it was seventy-five hundredths for the last one half of the year in the way in which it eventually worked out? A. Yes.

Q. In dollars, does that amount to something over \$600,000? A. Yes, sir. I was just looking at this journal entry, and it amounts to \$618,000.

[5011] Q. Is that \$618,363.21? A. Yes, sir.

Q. Now, just for point of clarification, that, I assume, applied to your operation not just in the Pacific Northwest but that included your California sales, Arizona sales, or I should say purchases from Standard of California? A. These were total gasoline purchases from Standard of California in all areas.

Q. Mr. Shepard, would I be approximately correct if I said that about 10% of your overall purchases were made directly in the States of Oregon and Washington during the '55 through '57 period? A. I don't believe I know the exact number of gallons sold in Oregon.

[5013] Q. (By Mr. Tilbury) Now, in the adjustment that Mr. Hilliard asked you about that was given in January, I believe, of 1957, Mr. Shepard, do you know whether or not there has been some discussion concerning that allowance prior to January of 1957? A. I assume they had.

Q. In other words, was this something that your company was aware might happen in January, even though it wasn't ultimately paid until January?

Mr. Hilliard: Your Honor, I object to this as being the accounting and not the negotiation of it.

The Court: Well, he can tell whether he knows or not.

Mr. Hilliard: Oh, that is right.

The Witness: I do not know.

[5014] Q. (By Mr. Tilbury) Well, the reason I am asking, I noticed in your records for 1957, you had been indicating, I believe, every month an estimated—I believe it is called on these records that have been identified a sixty-five hundredths cents per gallon— A. Yes, sir.

Q. —adjustment. In other words, I would assume that—well, is it not a fact that even during 1957, the money wasn't paid every month but was, in fact, paid in some sort of lump payment later? A. I believe that is correct.

Q. Was there a lump payment, for example, on the third quarter of something like \$170,000? A. I can't remember the exact amount, but I believe it was paid quarterly.

Q. Now, did Signal Oil and Gas ask for a larger adjustment even than the seventy-five hundredths cents? A. I don't know of my own knowledge, but I assume they did.

Q. For example, did the Signal Oil and Gas ask for an adjustment of something over one cent for the third quarter or perhaps earlier than that as well? A. I wouldn't know the exact amount.

Q. Were most of these negotiations and the like by Signal Oil and Gas, were they conducted by the highest [5015] officers in your company? A. I assume so, but there again I wouldn't know.

Q. All right. For example, Mr. Mosher, Mr. Green, Mr. Marsh, did they do quite a bit of it to your knowledge.

Mr. Hilliard: Your Honor, the witness has said he doesn't know.

The Court: I could not hear the question. May I have it, please.

(Whereupon the Reporter read back the last pending question.)

The Court: He may answer whether or not he knows.

The Witness: I don't know.

Q. (By Mr. Tilbury) Does Mr. Mosher own something like 52%—

The Court: He said he—I beg your pardon.

Q. (Continuing) —shares of your company? A. I wouldn't know.

Q. All right. Is it possible there may be some kind of adjustment that would not necessarily be reflected upon the records of your company? A. There is no adjustment that I know of that wouldn't be reflected in our accounting records.

[5016] Q. Could you tell me, please, the over \$600,000 adjustment, what period did that relate to? A. That was the year 1957.

Q. Just during that year? A. Yes, sir.

Q. Was that computed on a monthly basis and on the percentages that I believe you have already indicated? A. Yes.

Q. Do you have the journal vouchers for 1956, Mr. Shepard? A. No, I don't. This is 1957 here (indicating).

Q. Now, just so I am clear on this point, in case there is any doubt, the adjustment factor of .65, did that relate to the period from July 1, '56 to December 31, 1956?

A. In 1956 I don't believe we made any adjustment until we were advised and received a check in January of 1957.

Q. As far as the accounting office is concerned? A. That is correct.

Q. All right. In what amount was that check, do you recall, or would you have information? A. It was a \$300,000 figure.

Q. Now, was there an adjustment earlier than the month of July, 1956? [5017] A. I know of no adjustment.

Q. (By Mr. Tilbury) Oh, incidentally, is this 300,000, is that in addition to the \$618,000? Are those two separate checks we are speaking of? A. Yes, sir, two separate periods.

Q. Well, perhaps I could just shorten this up with regard to the prior period. If my notes are correct, and I hope counsel will correct me, 23-C indicates—perhaps you could—I think it is on page 3 or so of that, so I won't be misquoting it. (Bailiff hands exhibit to witness.) Mr.

Shepard, I realize this is probably a strange document to you, but on the next page, what would be normally the second page but which is labeled, I believe 28-A, in paragraph number D, Standard has listed certain temporary additional discounts extended to the Signal Oil and Gas Company. Do you see the paragraph that I have reference to? A. Yes, I do.

Q. Now, Mr. Shepard, I believe that you will find on the fourth line that Standard makes reference to an adjustment of fifty-two hundredths of a cent beginning on March 1, 1956 and ending with June 30, 1956? A. Yes, sir.

Q. Were you aware of this adjustment, if it occurred? [5018] A. No, this is a retroactive adjustment of \$300,000 I spoke of.

Q. But it is computed at a fifty-two hundredths of a cent ratio, whereas the balance is at sixty-six hundredths?

Mr. Hilliard: Counsel, you can read it. It is sixty-five hundredths, not sixty-six. Why don't you read the whole thing? It says, "Fifty-two hundredths of a cent from 3-1-56 to 6-30-56, and sixty-five hundredths of a cent from 7-1-56 to 12-31-56."

Mr. Tilbury: Yes, I—

Mr. Hilliard: It covers that entire period.

[5019] Mr. Tilbury: I will concede you read it correctly.

Q. (By Mr. Tilbury) What I was asking, unless my notes are mistaken, I thought you indicated you were not aware of an adjustment prior to July of 1956? A. The first I heard of any adjustment was when I received the check in January of 1957, which was retroactive to this opening period of 3/1/55.

Q. All right. Was that check in January of 1957, was that computed at the rate of 65/100ths of a cent? A. Approximately.

Q. All right. A. I believe we determined that it was close enough to 65/100ths to use as a factor.

Q. Did you use the same factor for all purposes which went into this three hundred thousand dollar check? A. The three hundred thousand dollar check was an actual



computation, whereas the 65/100ths was future estimates for 1957.

Q. Was it all based upon gallonage that had been sold in the preceding period? A. Yes, sir.

Q. Well, to get back to my other question, if your computation and the one for which the check was received in January of 1957 was computed at 65/100ths of a cent, was that the uniform computation to that gallonage?

[5020] Mr. Hilliard: I object to that, Your Honor. The witness has said that that was the closest figure and he picked it for the estimate in the future. He just told counsel it was future estimate, it was based on 65/100ths of a cent.

The Court: Let me have the question.

(Whereupon the reporter read the previous question.)

The Court: You may answer that.

The Witness: I am not sure I understand the question.

Q. (By Mr. Tilbury) In other words, in the computation of the check received, as I understand it, in January of 1957, Mr. Shepard, which I believe you indicated to be something over three hundred thousand dollars, was that figure arrived at by multiplying the gallonage for whatever the preceding may have been times a 65/100ths per cent or 65/100ths of a cent factor? A. I believe it was distributed based on the findings here. There was a portion of the gallonage at 52/100ths and a portion of the gallons at 65/100ths.

• • • • •  
[5021] Q. Would you have the figures in terms of gallonage on which the \$618,000 were based? Would you have the total number of gallons there? A. It is possible it is reflected in all of these various journal entries.

Q. There is no summation in any of your entries that you have brought? A. No, sir.

Mr. Hilliard: I believe, Your Honor, he didn't bring—we brought these up, or you brought these up after the deposition, not this witness. He didn't bring these.



Mr. Tilbury: I thought perhaps ne might know. I am not trying to make him do a lot of arithmetic.

Q. (By Mr. Tilbury) Would it be correct in saying this, that as far as the over-all gallonage in all locations, that the gallonage would be in excess of eighty million gallons for 1957? Would you recall offhand, Mr. Shepard, if that figure would be somewhere in the ball park? A. I would say it would be.

Q. Would it be less than one hundred million gallons over-all? A. Yes.

Mr. Tilbury: I believe that is all. Thank you, [5022] Mr. Shepard.

#### Redirect Examination

By Mr. Hilliard:

Q. In connection with these allowances counsel asked you about, Mr. Shepard, can you tell us whether or not Signal Oil and Gas during this period ever received a freight allowance from Standard Oil Company? A. No, sir, we never did.

Mr. Hilliard: That is all.

#### Recross-Examination

By Mr. Tilbury:

Q. May I ask how you made your entry in your journal voucher with respect to the adjustment for \$618,000; how was it entered, what sort of legend did you put on the entry?

Mr. Hilliard: That isn't part of the redirect, Your Honor.

Mr. Tilbury: Neither was your question a minute ago.

Mr. Hilliard: It was too.

The Court: He may answer to test the bookkeeping system, that is all. You may answer what type it was.

The Witness: May I have that question again, please.

Q. (By Mr. Tilbury) How did you enter this in the journal voucher, Mr. Shepard, or whoever made the actual entry under your supervision, I assume? How is it [5023] identified? A. It actually reflects the total amount.

of money received for the year 1957 as compared with the amount that we had estimated.

Q. Do you call it a subsidy credit, is that the term used on the journal voucher? A. It is called subsidy credit on the journal voucher.

• • • • •

[5159] Mr. MacLaury: Your Honor, our last item today would be the reading of the deposition of Mr. Gray.

• • • • •

[5160] (Whereupon the reading of the deposition was commenced, Mr. MacLaury reading the questions, and Mr. Hilliard reading the answers:)

“Direct Examination

By Mr. Tilbury:

Q. Would you state your full name for the record, Mr. Gray? A. A. D. Gray.

Q. What do the “A” and “D” stand for, Mr. Gray?

[5161] A. Andrew Douglas Gray.

Q. And your position, sir? A. Manager, refinery bulk sales.

Q. Of what company? A. Union Oil Company of California.

• • • • •

[5162] Q. What was your particular line of responsibility as manager of the Refiner & Jobber Sales? A. The sale of unbranded products, petroleum products.

Q. Would this be throughout the operating area of the company? A. Yes.

Q. This would be over-all supervision. A. Right.

Q. Did you have occasion to deal with the Signal Oil and Gas Company from time to time? A. Yes.”

• • • • •

“Q. Did you have a particular way of identifying the Signal Oil and Gas Company in terms of its classification

as far as your company was concerned? A. Well, they were a large buyer of petroleum products.

. . . . .

[5164] Q. During the years '55 through '58, did you have some contacts with the Signal Oil and Gas Company? A. Yes, sir.

Q. In what way did you have contact? A. Sale and solicitation of their petroleum requirements.

Q. Would you have had the primary responsibility of this company for dealings of that nature with Signal Oil and Gas Company? A. I had the prime responsibility, responsibility for the solicitation and acquisition of the business but not the final say insofar as the pricing or our policy were concerned."

Mr. Mac Laury: Would you skip over to page 7, please, Mr. Hilliard, line 11?

"Q. Would you have been familiar with any negotiations that might have been conducted by your company with the Signal Oil and Gas Company? A. Entirely so.

Q. This would be one of the responsibilities that you had? A. Yes, sir."

. . . . .

[5208] "Q. (By Mr. Mussman) I will show you defendant's Exhibit 3 for identification which is a memorandum from you to Mr. F. K. Cadwell, dated October 14, 1957, and previously referred to by Mr. Tilbury. I will give you just a moment to look at it? A. Yes.

Q. Calling your specific attention to the next, to the last paragraph, you said that the information related to you in that paragraph was given to you by Mr. Zamlock? A. Yes.

Q. In accepting this information, you believed that Mr. Zamlock was telling you the truth? A. Yes."

Mr. Bonyhadi: Your Honor, excuse me. We will object to the reading of this portion because it relates to a docu-

ment which is not in evidence and to which we raise the same objection as stated.

The Court: It will be overruled.

Mr. MacLaury:

"Q. Calling your attention to the last sentence in the memorandum, Mr. Gray, you say 'May we also add [5209] that in our best judgment, the prices offered by us are the competitive level under which an account this size could purchase elsewhere.' A. Yes.

Q. Just exactly what did you mean by that statement?

A. I meant that irrespective, irrespective of Standard Oil Company competition that the prices we recommended be charged to Signal Oil and Gas were the competitive prices generally offered by others at that time.

Q. Did the fact influence you in your believing Mr. Zamlock when he gave you the information that is referred to in the next to the last paragraph?"

• • • • •  
"Q. How well did you know Mr. Zamlock, Mr. Gray?  
A. I knew Mr. Zamlock very well in a business way and socially.

Q. Do you know him in both ways? A. Yes.

Q. Over how many years? [5210] A. Over 45 years.

Q. During the period of 1954 on up until 1958, did you see Mr. Zamlock often? A. Did you say 'often'? Not as often obviously as during this.

Q. Did you see him regularly during the period of time with any regularity? A. During which period now?

Q: From 1954 on to '58? A. Yes.

Q. You saw him regularly—I just want to know about how often you saw him, once a year, twice a year, once a month, or once a week? A. At least a couple of times a month.

Q. In these meetings, did you take occasion to discuss with him the possible sale of products of Signal Oil and Gas by Union? A. Yes.

Q. As I understand it, your job during this whole period of time was in the department to which you are attached with the solicitation and sale of petroleum products to rebrand jobbers? A. Yes.

Q. It was in line with that duty that you had your discussions with Mr. Zamlock? [5211] A. Right.

Q. Do you generally know where Signal Oil and Gas sold both, most of its gasoline in terms of geographic areas? A. Within reasonable meets and bounds.

Q. Would you say—what was your standing? A. I just had a reasonable concept.

Q. Mr. Tilbury referred to the Pacific Northwest as Oregon and Washington; let us take Oregon, Oregon and Washington versus California. Do you know where the bulk of Signal Oil and Gas was sold? A. In the Bay Area.

Q. More than in the southern part of California? A. Yes, by far. Probably more in the Bay Area than all of the other places combined.

Q. In discussing possible sales of gasoline to Signal Oil and Gas by Union, were you interested primarily in the California area? A. Yes.

Q. For what reasons? A. Were more familiar with the market. We were closer to our products in the state of California and outside one sets his feelings and so forth; this always presents problems to us.

Q. As I understand your testimony here in answer to [5212] Mr. Tilbury's question you did from time to time discuss with Mr. Zamlock possible sales then in the Pacific Northwest? A. Correct. That's right.

Q. To your best recollection, Union's first sales to Signal Oil and Gas of California were made pursuant to that letter agreement I have identified as the Defendant's Exhibit 1? A. Yes."

. . . . .



[5438]

Darwin Godfrey

was thereupon called as a witness in behalf of the defendant, and, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

**By Mr. MacLaury:**

Q. Where do you live, Mr. Godfrey? A. San Francisco.

Q. And you are connected with the Standard Oil Company? A. I was connected until sixteen days ago. I retired the first of this month.

[5440] Q. And then around 1931 and '32, you had occasion— A. Yes, I almost built right up to that point in these other matters, the Bitumen and Frozen Foods and things were behind me. And, in 1931 I had various jobs; and one day along about, I will say October of 1931, my then superior, Mr. Ralph Davies, a Vice-president of Standard, called me. [5441] We were both in Los Angeles at the time, and he said: "Would you come around to the Biltmore Hotel today for lunch. I want you to meet a couple of gentlemen." I went around and had lunch that day, and the gentlemen I met, Mr. S. B. Mosher, President of Signal Oil and Gas Company, and Mr. G. W. March, Vice-president in charge of marketing for Signal Oil and Gas Company. The Signal Oil and Gas Company at that time was engaged in a very limited way in the marketing of motor gasoline and lube oils and related products of the company. The company basically had been a natural gas company.

Q. Would you explain what "natural gasoline" is? A. Yes, that's the lighter fraction that is produced in conjunction with the production of crude oil. This company, Signal Oil and Gas, had contracts where they could extract these lighter fractions from the crude products originally around Signal Hill, as I recall it.

Q. I see. [5442] A. (Continuing) But it is a stock that is used in blending with the straight run product which is made from crude oil to make the final mode of gasoline the company uses on their cards. Well, this was the inception of my meeting with the Signal Oil and Gas people. I had explained their marketing, and they had only been in the market of motor gasoline at that time for a matter of a couple of years. And their market had grown to about two million gallons a month, and that was the maximum of the gasoline they could produce from a very small two product refinery. By that I mean a refinery that merely made fuel oil and motor gasoline.

[5443] Q. Would I be correct in saying then that you made an arrangement and bought the contract with the Signal Oil and [5444] Gas Company whereby Standard Oil Company would buy their crude oil and natural gasoline and in turn Standard would sell to Signal Oil and Gas Company finished motor gasoline? A. That is correct. I negotiated those contracts under my superior, of course, Mr. Davies.

Q. About when was the first contract concluded?

A. I do not remember the day, but it was in January of 1931—no, January of 1932 that the actual contract was completed and executed.

Q. Then after that, did you continue your contacts—  
A. Yes, I did.

Q.—with the Signal account? A. After the contract was signed, Mr. Davies said to me, "All right. Now that you got the contract signed, you will be the contact man or the account executive with that account." And from then on, over the years, I have had [5445] very very close contact with the people of Signal Oil and Gas Company.

Q. Now, this contract—or was it two contracts that you negotiated in 1932? A. It was actually three. One was a contract to purchase their natural gasoline, the other was

to purchase what little crude oil they had, and the third was to supply them their requirements. And I'm sure there were quantity limitations in it, but I don't remember what they were at that time of motor gasoline. ●

Q. Now, were these three contracts, were they amended from time to time as the years went by? A. Yes. I remained on that particular assignment possibly into, oh, mid '33, mid 1933. At that time, while I maintained a friendly relationship with these people, I didn't actually handle the account because I had another assignment. For several years, I was the contact man for Standard with the various committees involved in the Richfield Oil Company's reorganization. Richfield then was in receivership in Federal Court, and Standard was dealing with the various creditor committees hoping that we could make an arrangement to acquire Richfield. I spent several years there, but that did not materialize. As every one knows, Richfield is a separate outfit.

. . . . .

[5446] Q. Now, having been reassigned to the Signal Oil and Gas account in about 1938, did you have occasion to renegotiate [5447] the then existing contract? A. Not right at that stage. If I remember correctly, and I'm sure I'm very close to being correct, the contracts had been extended or rewritten in 1937, and those contracts were for a period of ten years. And inasmuch as they were extensions of previous contracts, why, the contracts were until the end of 1948. But by this time the Signal Oil Company had grown very, very substantially. They became a very large producer of crude oil, which crude, of course, was delivered to the Standard Oil Company. And our refineries were geared, of course, to that volume of crude oil. We actually had to have it to meet our commitments. And, of course, we could not and I'm sure the Signal Oil and Gas people could not just rock along under the existing contracts until 1948 without knowing where we would go from there, whether they had to find

a new purchaser or we had to find a new supply. So I started in 1945.

Q. About 1945, approximately what was the quantity of crude oil being purchased by Standard from Signal Oil and Gas at that time? Just an approximation, if you can recall. A. I would say for 1945, it was possibly on the order of 40,000 barrels a day. I could be quite accurate a couple of years later, but on that particular date I am not so sure.

Q. What prices did Standard pay to Signal? A. The posted price for the crude oil for the gravity and [5448] the particular field involved.

Q. Did Standard ever pay a premium or a bonus? A. Not to my knowledge, never. Standard never paid a bonus for crude oil from anybody.

Q. All right. 1945, is that after the war was over that you commenced renegotiating— A. That's right.

Q.—the arrangement with Signal Oil and Gas Company? A. That is correct. And when I say "I negotiated", I think I used the word further back "participated", I do not mean I was all alone in the negotiation. My principal at that time was Mr. T. S. Petersen, a vice-president of the Standard Oil Company.

Q. He was your boss? A. He was my boss. And my title at that time was assistant to the vice-president. He actually carried on the principal negotiations, but I was with him, I think, on every occasion that we met with him and participated in them and did most of the said work.

Q. Well, now, in these negotiations for the renewal of the existing contract in 1945, would you just give us the highlights of that and the problems, if any, and how they were solved, if they were? A. We still have involved three basic contracts. There was no particular trouble in reaching a conclusion as to [5449] the purchasing of their crude oil from them. That again would be on the basis usually followed in the industry at posted prices in the particular field for the particular gravity. And there was no par-



ticular problem in connection with the purpose of their natural gasoline. Again, that pretty well fits a formula of posted prices. Well, we ran into great difficulty in connection with writing a new contract or renewing the old contract for motor gasoline. The Signal people were insistent upon a longer discount, or to put it another way, a lower price than we were willing to sell the product to them for. These negotiations continued from the start in 1945 until, oh, mid 1946. I think the negotiations fit the pattern of most negotiations. At the outset, possibly we met once a month, and then the tempo stepped up a couple of times. Before long we were meeting weekly, and finally almost daily. And that brings us, as I say, to roughly mid 1946. And here is an interesting little side light, and that's probably why it is so firm in my memory, and it explains why we went in the direction that we eventually went. But we had been meeting this particular day in the office of O. W. March.

Q. Would you identify O. W. March again? A. He is a director and vice-president in charge of marketing for Signal Oil and Gas Company. He was present, Mr. S. P. Mosner, was present this day, and Mr. T. S. [5450] Petersen. We had started discussions early in the morning. We had gone to lunch together. We had returned to the office. They were still demanding a lower price for gasoline than we were willing to offer them. It came to be dinner time, possibly 7:00 o'clock at night, and we decided to go to dinner together. This is the interesting thing that I referred to a minute ago. We had two automobiles there. If we hadn't, the answer might have been entirely different. But in going out to dinner, Mr. Mosher and Mr. Petersen went in one car, and Mr. March and I went in the other car.

[5451] Q. (By Mr. MacLaury) Mr. Mosher, again, he was the— A. President and top man of the Signal Oil and Gas Company.

Q. All right. A. And we went out to the restaurant, and



what March said to me—"Darwin, what are we going to do; we are never going to agree on this thing."

Q. (By Mr. MacLaury) Will you proceed, Mr. Godfrey. A. Bud March wanted to know what we were going to do. [5452] We had been carrying on these negotiations for a year and they were adamant for a lower price, we were just as adamant that we weren't going to give them a lower price, and so I said, "Bud, if you will go along with me when we join this other gentleman"—that was Mr. Mosher and Mr. Petersen—"at dinner, I will stick out my neck and propose that we drop these negotiations and start to discuss buying you out." And he said, "I will go along with you."

Q. Now, at that time Signal really had two activities, the production of crude oil and natural gasoline? A. Yes. And in buying out, I am talking about only their marketing end. There was no problem in contracting to buy their crude oil and natural gasoline. He agreed to that, and, when we got to the restaurant, I threw that, what turned out to be a bombshell, but after people had thought it over, why, to make a long story short, that is the direction we went. It took us another year to evaluate and negotiate a valuation at which we finally did purchase the marketing business and the marketing facilities of Signal Oil and Gas Company.

Q. And those facilities, they consisted largely of retail stations, did they? A. No, they were everything related to a going marketing company. They had a number of bulk plants and commission distributors, and, of course, all the motor equipment and [5453] everything that went with that, and of course service station outlets. Possibly some relatively few owned, most of them I think were leased at that time. And then we came to—

Q. (Interposing) By the way, did you participate in the evaluation of these retail stations that were obtained from Signal Oil and Gas? A. I didn't actually make the field

trips. Most of the figures actually were fed in to me and I arrived at the totals, yes. I was the responsible man in arriving at the value that I recommended to our people we would pay.

Q. Go ahead. A. Well, the negotiations got in their final stage and we had agreed on the purchase price for their marketing facilities and their business when Mr. Mosher threw another monkey wrench into the machinery.

This would have been about, oh, I would say, in June of 1947.

Q. Was this prior to the closing on the acquisition?  
A. Prior to the closing. We had all of the contracts pretty much in final form, they had been prepared by the attorneys. We had agreed on most all of the details. We had agreed on the purchase price, but then he insisted that we again contract and, by "we" I mean the Standard Oil Company again, contract to supply them motor gasoline so [5454] that they could again enter into the marketing business after having sold at that time all of the marketing business that they then had.

We protested that vigorously. We had trouble with the Board of Directors of Standard even considering it. Mr. Mosher was quite a competitor in negotiating; picked up his pencils and his papers and headed out of the meeting room on a couple of occasions, and so Mr. Petersen, my superior, said to me, he said, "Darwin, I think this fellow means this." And I said, "Well, I am convinced he does."

So we compromised on this matter of furnishing motor gasoline to them. We agreed that if they increased the amount of crude oil and natural gasoline which they delivered to Standard over and above the amount that they were then delivering, and that was approximately 45,000 barrels a day at that time, why then we would furnish a quantity of gasoline to them equivalent to the yield from the crude oil, and we specifically spelled that out in the contract as thirty per cent.

I think there were some tenths on it, but that was roughly it.

In other words, if they delivered to us more than 45,000 barrels of crude oil, we would give them a quantity of gasoline equivalent to thirty per cent of that excess.

Q. Thirty per cent? [5455] A. Of the excess over the 45,000 barrels a day, and we also put in there that under no circumstances would we be obligated to deliver to them more than six million gallons a month of motor gasoline.

Q. Now, was crude oils still in 1946 an important factor to Standard?

. . . . .  
The Witness: I would say that it was the vital thing in the whole transaction. Standard simply had to have that crude oil. In fact, I think I can pinpoint it by informing the Court and the jury and all concerned, it is very, very vivid in my memory when I was made president of the Signal Oil Company, I was told by Mr. Petersen and Mr. Sawyer, a name you haven't heard before, he is the gentleman from Standard Oil that went from Standard Oil to Signal with me as the financial man, the secretary and the treasurer, and he and I were both instructed by Mr. Petersen that while we were certainly to do a good job in running the Signal Oil Company that we had just acquired, our main job was to maintain good relations with the Signal Oil and Gas people. [5456] so that we would under no circumstances jeopardize that supply of crude oil. We had to have it or we could not have met our commitments.

Now, I think maybe Standard, if it had been resourceful, could have found some way, but we knew of none at that time.

Q. There has been some confusion, particularly the first part of this case, about Signal Oil and Gas Company and Signal Oil Company.

Now, you have just indicated that you were made president of the Signal Oil Company. Would you explain just

briefly how that organization was formed after the acquisition of these assets of Signal Oil and Gas, and what Signal Oil and Gas had left, if anything? A. I would be very happy to.

As I recall it, the marketing conducted by Signal Oil and Gas Company was conducted by a wholly-owned subsidiary of theirs, Signal Oil Company, a California corporation. Standard Oil Company did not buy that company, as I am careful to state here, the transaction was that we bought the business and we bought the facilities, we did not buy the corporate structure. We formed a company of the same name, Signal Oil Company, a Delaware corporation, and then when we acquired all of these facilities, trademark, everything, everything that went with the marketing, they were placed [5457] into the Signal Oil Company, a Delaware corporation. That was the new subsidiary of Standard Oil Company of California, and it is that company that I was made the president of.

Q. I see. And did the Signal Oil and Gas Company continue in existence? A. Oh, yes, the Signal Oil and Gas Company at that time was a very, very substantial thing, its marketing was a relatively small part of their business. They basically were crude producers and natural gasoline producers, and under these contracts that we had entered into, they continued to sell their crude oil and their natural gasoline to the Standard Oil Company. It was merely a contractual relationship. All that we had acquired was the marketing end of their business.

Q. Now, you mentioned that then Mr. Mosher, I believe it was, insisted again before this closing of this transaction whereby you acquired, Standard acquired these facilities, he insisted still on a supply of gasoline? A. That is correct.

Q. And you say you compromised by giving him an agreement to provide him with a limited amount? A. A limited quantity provided they step up their supply of crude oil to us. We were unwilling to furnish back to

them quantities unless they increased their deliveries to us. [5458] Q. As part of the closing and the acquisition of these assets, did Standard sign or execute a contract for purchase of crude oil by Standard and another contract and sale of gasoline by Standard? A. Oh, yes.

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Q. I see. Now, what arrangement did you have with Signal Oil and Gas concerning the name "Signal" as it applied to marketing of gasoline? A. We had a separate letter agreement on that. I think I probably worded it, worked with the attorneys that did the [5459] wording. The wording was this, that they agreed not to use the word "Signal" either alone or in conjunction with any other words in the marketing of petroleum products.

I think those are almost the exact words.

Q. Now, did you have in your contract a provision which required Signal to use its own brand names and not Standard's brand names in the marketing of gasoline? A. Yes, that is in this contract. It is right up in the first paragraph.

Q. Now, do you remember how long a term was this contract? A. This particular contract was firm at that time for about five years. It could have been cancelled on six months written notice by either party, but the notice couldn't have been given prior to July 1, 1953.

Q. So, by 1953, it was no longer a firm contract, it could be terminated by either side on six months notice? A. Yes, it is what we call an Evergreen contract.

Q. Now, did you have some further experience negotiating with the Signal Oil and Gas Company after this contract was signed? A. Yes, it seems to be the story of my life, negotiating with those people.

In 1952, and that would be a year before the parties had the right to serve a termination notice under this contract, T. S. Petersen, who had then become the president of [5460] the Standard Oil Company of California, asked me if in addition to my duties as the president of our Signal



Oil Company, if I could undertake to start negotiations for a new contract with Signal Oil and Gas Company.

Q. That was in 1952? A. Yes, I imagine that year, I don't remember just when.

Q. And then did you do so? A. I started then, yes.

Q. Just briefly, what were your procedures? Who did you contact and how— A. Oh, my main contacts, of course, were with Mr. O. W. March, the vice president of marketing, in the same way that Standard had assigned me this job, why the Signal Oil people asked Mr. Mosher, the president, and the others had given the job to Mr. March, with the hope that the two of us could agree on most of the terms of a new agreement before they were submitted to our respective boards.

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[5461] Q. (By Mr. MacLaury) Well now, skipping over as rapidly as you can and hitting the highlights on these preliminary negotiations to get into the year 1955, were there any particular highlights that you think you should touch between '52 and '55? A. No, I can state very briefly that I commenced the negotiations with Mr. March. We were initially working on three contracts, just like that existed before, one for crude oil and one for natural gasoline and one for motor gasoline. Along the line we consolidated those into one draft of the contract and as before, we had very, very little difficulty in agreeing about the conditions under which we would buy their crude oil and their natural gasoline.

Q. Now, Mr. Godfrey, would you look at Exhibit for identification in front of you 1704. Now is that a memorandum that you wrote to Mr. Vesper? A. Yes.

Q. Now, identify Mr. Vesper for the jury in connection [5462] with this subject, please. A. By this time I was reporting to Mr. Vesper. He was then the vice president of the Standard Oil Company of California, Western Operations, Incorporated. And that was the affiliate or a subsidiary of Standard that had to do with operations all through the area which is involved here.

Q. Did you write this memorandum dated March 18, '55? A. Yes, I wrote this.

Q. Did you write it during the period of your negotiations with O. W. March, who represented Signal Oil and Gas? A. Yes.

[5463] Q. (By Mr. MacLaury) (Continuing) What was your—you had some particular problems in negotiations with Mr. March; you had a particular problem in connection with this gasoline? A. Yes, there was a continuing problem. It wasn't exactly the same problem we had years before that led us to buy their company, their marketing business. Now, we were up against the same thing again. They were demanding a lower price on gasoline. They were at this time and prior to this during this period of '52, '53, '54, informing me that they would be able to buy gasoline from other suppliers cheaper than we were willing to sell it to them.

Q. Did they name any of those other suppliers? A. Yes. As I recall it, back in the prior time, they were talking to Hancock, Norwalk. Oh, I think Richfield was mentioned at one time and Rocket.

Q. Now, when you wrote—did you write this memorandum at about the time you had the conversation to which you refer? A. Oh, well, yes, it was probably the day following the final of this several days conversation. I have said here: "During the past few days, I have spent several hours with different ones." It was written right at the time.

[5465] Mr. MacLaury: If I might read this memorandum at this time, Your Honor?

The Court: Surely.

Mr. MacLaury: This memorandum is dated Los Angeles, California, March 18, 1955, and it is written by Mr. Godfrey

to his immediate superior, Mr. H. G. Vesper. It is headed "Signal Oil and Gas Company."

"During the past few days, I have spent several hours with Bud March, during which time Sam Mosher was present for a few minutes."

Mr. Mosher's only comment apropos of the contract situation was to express again his view that 'tank truck price means absolutely nothing to anyone but Standard.'

The following summarizes the statements of Mr. March to me:

He is very 'disappointed and hurt' that Standard did not grant his request for a temporary increase in [5466] margin of .5¢. He says it is a one-way street with SO&G Co. doing all the favors.

He is convinced that Western Hyway can get margins of 4.50-5.50¢ on a five-year firm deal for their gasoline requirements. (I suggested he check to see if the discounts are off the same posted price as ours or off higher posting such as Union.) At another point in the conversation he dropped that Hancock and Norwalk were the companies offering the above discounts.

He also said he was sure that SO&G could get up to 12,000,000 gallons, possibly 18,000,000 gallons per month for five years firm from a major competitor at margins of 5.00¢ and 6.00¢ off. This would mean that SO&G Co. would no longer buy gasoline from Standard. He states that they are seriously considering this. At one point, Hancock was mentioned. He claims he could get a deal with them, and he thought that a \$2,000,000 expenditure would increase Hancock's capacity sufficiently. He knew that Standard had turned

down Hancock's recent proposal on products and were currently discussing a crude oil deal.

Mr. March says that Messrs. McClanahan and Mosher are planning a trip in April. He wonders what it is all about. Mr. Mosher inferred that they plan to discuss [5467] the contract."

Signed, D. F. Godfrey.

Q. (By Mr. MacLaury) Now, Mr. Godfrey, this memorandum here mentions Hancock and Norwalk as possible suppliers of Western Hyway; would you identify those three companies, Western Hyway, Hancock, and Norwalk?

A. Yes, Western Hyway was an affiliate of Signal Oil and Gas Company. They were headquarters with their terminals in Sacramento, California. Hancock was an independent oil company at that time, and Norwalk was an independent, but, as I recall it, they belonged to Bank Line. I am pretty sure the Bank Line Oil Company. But, they were independent companies.

Q. Now, Mr. Godfrey, you have reported here a number of offers that Signal Oil and Gas stated they had; did you have reason to believe that Mr. March of Signal Oil and Gas was telling you the truth when he stated he had these offers from competitors of Standard? A. Oh, I didn't have the slightest idea about it. As I [5468] have testified here, I maintained a very, very close relationship with Mr. March and the rest of the Signal people since 1931, and I had absolute confidence in their integrity. I have never known those gentlemen to lie to me.

[5470] Q. (By Mr. MacLaury) Now, Mr. Godfrey, you testified about the negotiations of the contract that was eventually signed in July of 1947, which is Plaintiff's Exhibit 321 and Defendant's Exhibit 1007; through what areas—and this was a contract that provided for the pur-

chase and for the sale of gasoline by Standard to Signal Oil and Gas; now, to what areas did that contract apply? A. I don't have that exhibit back, but I can say it from [5471] memory. California, Arizona, Oregon, Washington, Idaho, and Nevada.

. . . . .

Q. Now, you were testifying that in 1955 you were negotiating a new contract with Signal Oil and Gas, a sale by Standard of gasoline to Signal Oil and Gas; did you ever, did you ever arrive at a draft of a contract submitted by Signal Oil and Gas? A. Yes, we did. This was based upon my discussions with Mr. March. Our own people actually drafted the document incorporating what March and I had arrived at. That draft was dated December 9, 1955, and I handed Mr. March copies of it on December 27th.

Q. You had better bring the speaker a little bit closer. A. I handed Mr. March copies of it on December 27th, 1955.

Q. And generally, just very generally, what was the form of that contract; how was it revised? A. This contract, that is, differentiating between the [5472] previous contracts, incorporated the three phases in one document. It was a purchase agreement whereby Standard would purchase from Signal Oil and Gas their crude oil; and another section, Standard would purchase their natural gasoline; and another section where Standard would supply to them, sell to them more gasoline.

Q. And how about the price clauses for gasoline that would propose that Standard sell to Signal Oil and Gas?

. . . . .

[5473] Q. Now, after you submitted your draft for the proposed contract in March or December of 1955, did you have further discussions with Mr. March's superiors? [5474] A. Yes, I—I talked with most of those people mostly



in the presence of Mr. March. And that would be in his office, and we were carrying on our discussions. I tried diligently to bring that thing to a conclusion. I ran into exactly the same snag that I ran into years before on the previous occasion, and that is that we were unable to agree on the price of gasoline, the discount for gasoline. They had these offers from competitors, other major suppliers, and the Standard Oil Company was absolutely unwilling to go that low in pricing to them, and they seemed adamant that they would not extend the arrangement without lower prices.

Q. Now, do you have in front of your defendant's exhibit for identification 1705? A. Yes, I do.

Q. And what is that? A. Oh, this is a letter addressed to me by Mr. O. W. March, vice-president of the Signal Oil and Gas Company. It is addressed to me as the president of the Signal Oil Company. That, of course, is an improper address there because in these negotiations, I had my other hat on. But for all practical purposes, it's all right. I was the negotiator for Standard Oil Company insofar as our relationship with Signal Oil and Gas Company is concerned.

Q. And— A. It is dated March 28, 1956, and what he says is this:

[5475] Q. Well, you can't say yet what he says, Mr. Godfrey, because that is not in evidence yet. A. I see.

Q. But does he mention there certain offers to Signal Oil and Gas? A. Yes. This is a tabulation to the effect that they have knowledge of price offers by major companies.

Q. To whom? A. They don't state, but I would be— looking at these locations and all, I would be pretty much convinced that the offers, at least in part, would be to their—well, probably across the board to their affiliate, the Western Hyway Oil Company.

. . . . .

Q. (By Mr. MacLaury) Now, Mr. Godfrey, this letter is [5476] addressed to you. Would you read that to the jury?

A. Yes. "Dear Mr. Godfrey: We have knowledge of the following offers to supply gasoline which have been made recently either by major oil companies or by companies that obtain their supply from major oil companies." And then there are several headings. The first heading is the company offering the price, the name of the supplier, the date of the offer, and the discount under Standard Oil Company's posted tank-truck, and specified for both the regular grade of gasoline and Ethyl gasoline, and defining the point of delivery.

The first item is Westway. That, of course, is an affiliate or a subsidiary of Union Oil Company. Union Oil was the supplier. It was an offer of March 21st, 1956, at five and two-tenths cents off for regular gasoline and five and eight-tenths cents off or Standard's posted price for delivery at Eugene, Oregon.

Q. Now, let me interrupt there and ask you at this time, March 28, '56, what were the prices that—what were the discounts off posted tank-truck that Standard was charging Signal Oil and Gas?

[5477] The Witness: Standard's discounts were the same as they have always been, four and a half cents on regular gasoline and five and a half cents on Ethyl gasoline, and in March of 1956, no additional discounts.

Q. (By Mr. MacLaury) All right. Now, the next item, would you read the offering company—the— A. Yes.

Q. —company offering the price? A. Westway, the same as before. Union Oil as the supplier, same date, 3—March 21st, and the discounts here, are four and one-tenth cents on regular and four and a half cents on Ethyl gasoline, with deliveries to be made at either Eugene, Oregon, or Medford, Oregon. The next one is Rocket, which is an affiliate of Richfield, a supplier. It's the same date. The

discounts offered here were three and nine-tenths cents on regular and four and four-tenths on Ethyl for deliveries at Medford, Oregon. The next supplier was Sunset, supplying Union gasoline. The date of this offer was March 23rd, 1956. The quotations were four and two-tenths cents off on regular and five and two-tenths cents off on Oleum—for delivery at Oleum. The [5478] next is Wilshire, which would be supplying Associated Oil Company-gasoline. The date of that offer was March 5th. The offered discount was three and ninety-five hundredths cents a gallon on regular and five and forty-five hundredths cent a gallon on Ethyl for delivery at Avon, California. And the next was Union Oil Company directly, offering as supplier on March 22nd, with offer of discounts of 4.4 for regular and there is no quotation for Ethyl, and that was for delivery at Union's terminal at Oleum.

Q. Oleum, California? A. Oleum, California. That is down around San Francisco Bay.

Q. Would you read the next part of the letter? A. Yes. "It is our understanding that Westway is now selling to the account at the price shown in the first offer listed above and that the second and third offers were quoted on the basis of being guaranteed for a period of one year. We believe the foregoing demonstrates that the price which we are now paying Standard Oil Company of California for gasoline is too high and we request an adjustment in that price to meet competitive conditions.

"Very truly yours, Signal Oil and Gas Company, O. W. March, Vice-president."

Q. Now, with respect to the first offer listed, the Westway offering price which named as the supplier Union and [5479] at a regular price of 5.2 on Ethyl, 5.8 off posted, did you at that time have any reason to believe that this report was a truthful report? A. I had every reason to believe it was accurate.

Q. Now, having in mind that this letter was addressed March 28th, 1956, and having in mind—strike that. Did

you continue your negotiations through March and April with the Signal Oil and Gas representatives to conclude this new drafted contract that you had— A. Yes. This was a continuing thing. I was not successful. I had many conferences with Mr. March trying to get the thing off dead center. I talked with Mr. Harms on several occasions. He was a Signal Oil and Gas Company attorney.

Q. How do you spell that? A. H-a-r-m-s. Pete Harms. And he says, "Our people aren't going to even waste their time considering the thing, and you fellows get realistic about the price of gasoline." So I had no luck at all of even getting a formal consideration of this contract, and the draft that they had had blanks in it as to the discount. We hadn't even put a figure in it. It was just a line that the discounts would be so much, because we were so far apart.

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[5481] Q. Approximately when? A. Oh, that would have been along possibly April, May, June, 1956. I don't remember just how long it took me to work up figures and make a presentation on it.

Q. During this period, did you have some discussions with Mr. Zamloch? A. Oh, I was having continuing discussions, of course. They had demanded that we give them a temporary allowance of a half a cent a gallon. We consistently refused to do so. I undoubtedly told him I was working on something that hadn't been approved by my people yet.

[5482] Q. By the way, who is Mr. Zamloch? Is that Z-a-m— A. l-o-c-h.

Q. Who is he? A. He was associated with Mr. March. I think at one time he had the title of manager of their distributor sales. Some such title.

Q. Now, did you have any—were there any reports made to you that Zamloch was in touch with the Union people from sources other than Signal Oil and Gas?

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Q. (By Mr. MacLaury) Were there any reports to you during this time, July—June or July, in the summer of 1956, that Mr. Zamloch had been in touch with the Union people?

. . . . .

[5483] A. Yes. It would be along about this time that Mr. Zamloch was telling me that—and continuing before this and after this—that they did have lower offers from other major competitors. But one day, and it would be about in that period, mid 1956, one of my associates informed me that he had seen Mr. Zamloch and Doug Gray of the Union Oil Company at lunch. And for a matter of two hours, why, I assume that they were—that Union Oil was the company to which Mr. Zamloch referred when he said he did have lower offers from another major oil company. But I didn't have to assume it very long, because that very evening I was present when Carl Zamloch was talking about it with Mr. Mosher, and he told him in my presence.

[5484] Q. What did he tell him? A. That they—that he had been talking with Doug Gray of Union, that they were willing to make a lower price than we were willing to make, and in my presence Mr. Mosher authorized them to go on the outside and buy elsewhere if they could buy cheaper than they were buying from us.

Q. Now, during this period, and we are talking still about the middle of 1956, did you have occasion to talk with the—certain representatives of Western Hyway who purchased from Signal Oil and Gas and Mr. Zamloch? A. Yes. It was probably a—a strategic maneuver on their part to convince me of these lower prices. . . .

. . . . .

[5485] Q. And what was one of the subjects of discussion at that luncheon? A. Well, the discussion at that luncheon was that these people who were customers of Signal Oil and Gas Company had direct offers from other suppliers



at prices less than Signal Oil and Gas Company was supplying them.

Mr. Hall: What is the time and place of this luncheon? I won't ask what was eaten.

The Witness: Exactly, I don't know, but as I mentioned yesterday, around mid-1956. I think I described it June or July, along in there.

Q. (By Mr. MacLaury) The city, the place? A. This was at the Jonathan Club in Los Angeles, just a block from our office.

[5488] (By Mr. MacLaury) Now, Mr. Godfrey, you mentioned the name of Richards, Roberts, and Zamloch and Nickell. Who is Mr. Nickell? A. Mr. Nickell was a long-time employee and vice president of the Signal Oil Company when it was owned by Signal Oil and Gas Company. He was one of several hundred people that joined the new Signal Oil Company in the subsidiary of Standard of California in July of 1947. And he was our vice president and general sales manager as he had been in the former company.

Q. How well did you know him? A. Very, very well, personally and in business over many, [5489] many years.

Q. And what was your feeling about the veracity of any statement he would say to you? A. Oh, there was no question that Wally would be factual with me on this. He had—just to tie this thing in because you kind of dropped Mr. Nickell in the middle—where did he get over here—he quit, he resigned from Signal Oil Company in the early 1950's to return to the Signal Oil and Gas affiliate, Western Hyway. In other words, he rejoined the Signal Oil and Gas group and he had a part ownership in the Western Hyway Oil Company, headquarters at Sacramento. But it is just commonplace every time, most every time Mr. Nickell would come to Los Angeles, I would be invited to join them for lunch. The same way, I knew the other people because I have been the contact man on this account

for many, many years, not only business associations but they are personal friendships.

Q. Now, after this luncheon with these four gentlemen, did you have further occasion on that day— A. (Interposing) Yes, I don't think I completed right here something that I think you should know, and that I testified to yesterday in the deposition, that I took the stand at this luncheon that it was all very, very interesting, but that I had just been invited to lunch and any quarrel that these gentlemen—by that, I mean Mr. Nickell, [5490] Robertson and—

Q. Richards? A. Richards—had was certainly not with me. Standard Oil Company wasn't their supplier. This quarrel was with Signal Oil and Gas Company and I was just an innocent bystander there that day.

But later that day, and the jury should understand that my office was on the 7th floor of a building at 811 West 7th Street in Los Angeles, and the Signal Oil and Gas occupied that same building, and Mr. March was down on the 2nd floor. That accounts in part at least for our very close association.

Late that afternoon, around 5:00 o'clock, I guess it was, he telephoned me and asked if I would drop down a while, and I went down and they were still pursuing the same battle that they were having at noon, except they were now in the presence of the top man, the vice president of marketing.

Q. Who was present, who all was present? The same people at lunch? A. Yes, there might have been some more. There usually were, but Mr. Zamloch was there and these other gentlemen, and there were some other people that shared offices there. It was frequent that other people were there. I don't remember, but they wouldn't be the ones involved in this. [5491] And I took the same stand that I had taken at lunch, but Mr. March's position was, unless he had a lower price from the Standard Oil Company, he could not give his customers a lower price.

Q. Now, you mentioned working on this problem and a formula that you had suggested to some of your superiors— A. Yes.

Q. —at Standard Oil Company concerning a possible higher allowance, was it, or bigger allowance to Signal Oil and Gas? A. That is correct. We knew that we would have to make some concession if we wished to write a new contract and preserve that crude oil supply for us.

Q. Now, what was the reaction of your superiors at Standard eventually to your suggestion? A. They approved making an adjustment.

Mr. Hall: May I ask what the time is on this?

The Witness: Yes, the approval—frankly, I don't remember exactly when they approved it, but it was not until January of 1957 that I was authorized to inform the Signal Oil and Gas people, Mr. March, of that, and at that time we gave them a check.

[5496] Q. (By Mr. MacLaury) Now, when was Signal Oil and Gas Company advised that Standard Oil Company of California would extend to it an adjustment on prices which had been prevailing in 1956? A. That would be in January of 1957. That is the memorandum that I hold.

Q. Now, is this—did this adjustment apply to prices charged by Standard to Signal Oil and Gas throughout this six state marketing area that you have mentioned? A. Oh, yes, it just applied in total.

Q. In total. It didn't apply to Oregon? A. I must make a minor exception. It excluded Phoenix because they had a supplier for a different market. I think that was gasoline I think out of Texas.

Q. But, it did apply to the entire six states marketing area? A. That is correct.

Q. Except for Phoenix? [5497] A. I was only dealing with those.

[5500] Q. Now, you have before you Exhibit 1550C-1 and C-2? A. Yes, I do. These tabulations.

Q. Now, that is in evidence a schedule showing Standard prices to Signal and first net proceeds to Standard starting with the period August, 1956 down through December of '57; now, you say the first line refers to August of '56 to December, '56? A. That's correct.

Q. Now, do you recall—then you will see there is a footnote "1"? A. Yes, I see that.

Q. Now, in that period of time, you calculated this check—I will withdraw that. For this period of time of August through December, what fraction of a cent a gallon had you calculated into this check which was handed O. W. March in January of '57? A. Oh, I think that worked out to almost exactly sixty-five hundredths of a cent.

Q. And would there— A. I don't have a tabulation on that, and that doesn't— [5501] this doesn't show that. No, that is a reasonably close figure.

Q. Now, will you turn to 1550B-1 which is dated, the memorandum dated February 21, 1957? A. That was the one we just renumbered.

Q. That is right. Now, you had a conversation with March of Signal Oil and Gas on or about that date? A. Well, this says in the first paragraph that I had one with him the day before, so it would be the evening of February 20, 1957.

Q. And what did you say to him at that time so far as Standard's position with respect to his adjustments was concerned, particularly as it may have affected you? A. I had told him that the adjustment was purely a temporary arrangement, that there was no restriction or commitments of any kind in connection with it. The mere fact that we had given it to them for that period, that we were not obligated in any way to carry on with a similar adjustment in the future.

Q. And— A. And as this memorandum goes on to say, apparently, I was a little wrong in that. That was my

understanding, but in the meantime, Mr. McClanahan, President of the Western Operations, and Mr. Mosher had had a discussion. I don't know whether it was by telephone or otherwise, and Mr. [5502] Mosher confirmed that there was certainly no commitment on Standard's part to continue this special adjustment but that it would be continued until such day as we told them that we would discontinue it and that was the difference. I had told Mr. March that this was it. I knew nothing further, but in the meantime my superior had told the head of Signal Oil and Gas Company that we may not necessarily continue it, but it would go up to the point of the day we told them that we would do it.

Q. And didn't Standard continue the adjustment during the period 1957? A. Yes, it continued until the end of our arrangement with them, so far as I know.

Q. And were these adjustments made each month or by the week or how was that done? A. No, the formula that I had suggested was the one that carried on. It was a quarterly figure.

Q. And did you hand the checks to Signal Oil and Gas during this period; were they mailed out? A. I handed this first one to them; whether the subsequent ones were mailed or handed to them, I just don't know. I just don't remember. Q. And these adjustments during 1957, again, was that on account of the six state marketing area? A. Oh, yes, I was dealing only with totals, the total [5503] volume less whatever small gallonage, if there was any over in Phoenix, and based on the experience of Signal's dealers in these six states.

Q. Did Standard ever extend a higher adjustment than three-quarters of a cent to Signal Oil and Gas? [5504] A. No, we did not. We were absolutely adamant on that. If we had, we probably would still have the relationship with Signal Oil and Gas.



Q. In other words, it is your testimony that even though the formula would come out to something, or with a result of something in excess of a cent, you still held it? A. That is my testimony that at no time did we allow more than three-quarters of a cent in excess of the base rates of four and a half, five and a half.

Mr. Hall: Could you advise as to the time that you made that statement to them?

The Witness: I think it would have to be, I mean naturally not to the day—I can't tell you that, but early in 1957 I undoubtedly told them that we were working on a formula. I am sure of that. That is the only way I [5505] could have preserved even a relationship during the time. I was in no position to give them a figure until I had authority from my own people.

[5506] Q. Now, did you continue your negotiations with representatives of Signal Oil and Gas through 1957 in an attempt to reach a final agreement with that company? A. Yes. I think possibly you can't—there wasn't too much negotiating. They did have this contract in their hands, this draft. It was an incompleated draft because it had blanks in it as to the discount they would receive on gasoline. I think beyond that it was a contract that would have been acceptable probably in the end with probably some minor adjustments; and I was just constantly inquiring if we could get together and read it and decide and give us a decision. You see, my charts, as I explained way back at the start of my testimony, was that this Mr. March and I were trying to iron out the things that we as individuals could agree on without of course committing our principles [5507] finally and until it had been approved by the respective Boards of Directors, but what would be a workable arrangement in our judgment. One point that we were unable to agree on was this price of gasoline.

[5521] Q. (By Mr. MacLaury) Then in October, 1957, Mr. Godfrey, did you receive some definite evidence that

Signal Oil Company was purchasing part of its gasoline supplies from competitors? A. Yes, I did.

Q. Directing your attention to Exhibit 1707 for identification, just state very briefly what the circumstances were of your having received that definite notice? A. This is the time that I was reporting to Mr. Vesper, that I had received an envelope addressed to Signal Oil Company in an envelope bearing the return address of the Union Oil Company at Richmond, California, and that it had in it five loading tickets covering deliveries of gasoline to Western Hyway Oil Company at Richmond.

And I might at this time explain how I—

Q. (Interposing) If you would, please.

Mr. Hall: Is this document in evidence yet?

Mr. Mac Laury: 1707, no.

Q. (By Mr. MacLaury) If you would explain the circumstances, please. A. It was not at all unusual, in fact it was a regular thing, for both the Signal Oil and Gas Company and the Signal Oil Company to get each other's mail. After all, there was a similarity in names. One was Signal Oil Company, the other Signal Oil and Gas Company. We had our [5522] offices in the same building. We found that it was absolutely impossible to separate mail; in fact, the post office would not separate—

Q. (Interposing) Would you bring the microphone a little closer, please. A. The post office could not separate it and so as a result, Signal Oil and Gas Company and Signal Oil Company maintained a common mail room in the building at 811 West 7th Street, where the mail for both was received.

Of course, the great part of it was identifiable because people properly addressed it to their post office box and ours to our post office box and it could be separated. But, of course, it is human nature to rather shortcut on writing an address on an envelope, and many times people would just write "Signal Oil Company," and when, if they had

written it in full, Signal Oil and Gas Company, it would have gone to them or Signal Oil Company, it came to us.

I don't recall which one of our individuals got this, but they, of course, knew I would be interested in the deliveries by a competitor to an account that we had been supplying gasoline for, so they brought this envelope with the five loading tickets to me.

This memorandum that we have here is merely reporting this situation in San Francisco, and I am sure right after [5523] that I probably took these invoices down to Bud March on the 2nd floor and kidded him about it.

Q. Did you report the situation in a memorandum marked 1707, to your superior? A. That is to Mr. Vesper, that is the memorandum we have here now.

Mr. Mac Laury: I offer 1707 in evidence.

Mr. Hall: Your Honor, we have a continuing objection on the grounds of failure to pinpoint as to these documents. We are not making any technical objections, and if we may have that continuing objection, we won't say anything further as these come in.

The Court: May I take a look at these, please.

[5524] The Court: Now, the witness has been here and he has testified subject to cross examination this that is contained in the memorandum. That is for the jury to determine what they wish to do about it. This is being offered not as proof of those facts but to substantiate or corroborate this testimony that he conveyed it to his people.

Mr. Mac Laury: Correct, your Honor.

The Court: It will be received on that basis.

(Whereupon, Defendant's Exhibit 1707, being a memo from D. F. Godfrey to H. G. Vesper, dated October 2, 1957, having been duly offered, was received in evidence.)

Mr. Mac Laury: If I may read 1707, Los Angeles, California.

The Court: By "his people" you mean the other officials of Standard Oil?

Mr. Mac Laury: Yes.

"Los Angeles, California, October 2, 1957.

Subject: Motor Gasoline deliveries to Western Hyway Oil Company (SO&G Co.) by Union at Richmond.

Mr. H. G. Vesper

San Francisco—

For your information.

[5525] "This afternoon I received an envelope postmarked Richmond, October 1, addressd to Signal Oil Company and bearing the return address—Union Oil Company of California, 1300 Central Drive, Richmond, California. The envelope contained five loading tickets covering loads at Richmond to Western Hyway Oil Company of Regular and and Ethyl Gasoline ranging from 8,350 to 8,640 gallons per load.

When one considers the special allowance we make to SO&G Co., this seems to support that Union prices are at least 5.25¢-6.25¢ off posted tank truck, and I have good reason to believe the Union prices are on the order of 5.50¢-6.50¢ off."

• • • • •  
[5529] Q. (By Mr. MacLaury) Now, did Standard Oil Company on a level somewhat higher than yours get in touch with Signal Oil and Gas concerning these purchases from Union? A. Yes, very definitely they did. I cannot tell you the exact date.

Q. Do you have Exhibit 1710 in front of you; does that refresh your recollection? A. I can tell you I knew there was such a letter, and here it is. Mr. McClanahan wrote to Mr. Mosher expressing his surprise and amazement and otherwise that they were buying from Union in the light of their relationship with us.

Q. And is that the import of Exhibit 1710? A. Yes. That is the letter dated October 24, 1957.

• • • • •  
[5534] Q. (By Mr. MacLaury) Now, finally, was a decision made among the Standard Oil Company officials with

which you are familiar concerning their final decision of the Signal Oil and Gas business? A. Yes, by this time late 1957, the Standard Oil people were reconciled to the fact that we had been unable to agree. We were adamant. We would not extend a greater price adjustment, and they were just as adamant that they could and would and are now buying, at this date buying from others at a lower price; so, we had pretty tentatively concluded along here in November or thereabouts that we would be the ones to terminate the arrangement. The liftings from us had dwindled down. They had the rights under the crude contract to start holding back on the deliveries of crude to us, and it has just reached the point where it wasn't worth while pursuing it much longer. I am sure if I [5535] could get an agreement in the next month or so or before the end of the year, why, it would have gone on. I was about the only one that was still trying hard to get the companies together.

Q. Was a notice finally sent by Standard to Signal Oil and Gas? A. Yes. We had made that decision late in December.

Q. And when was the notice sent, if you recall? A. No, I have it. I don't have any proper papers that are in evidence here except I did ask our people to tell me the date of this notice, and I have it here. Standard served the six months notice in January of 1958 terminating gasoline sales to Signal Oil and Gas as of July 31, 1958.

[5553] Cross-Examination

By Mr. Hall:

[5556] Q. (By Mr. Hall) Within your general experience, I am not tying you down, sir, to this particular station of Williams, were you familiar with temporary retail price assistance reaching as high as 7.5 cents per gallon? A. No, I am not familiar with that.



Q. These things didn't come across your desk? A. Oh, no, not individually.

Q. But you did work up a formula, I understand it, for Signal Oil and Gas which related over to your price assistance? A. Yes. That is what leads me to believe this is very excessive because I have testified in that formula that price assistance was down on the order around a penny and a half or whatever it was in these various times.

• • • • •  
[5575] Q. All right. Turning now to I think it is your 1515-B or Defendant's Exhibit 1515-B, there is a reference in there on the second paragraph to a check of \$394,735 paid to Signal Oil and Gas Company. A. Yes, sir.

Q. Now, to get this clarified, what period of time was that check for? A. That check was computed on the basis of Signal Oil and Gas Company's purchases from Standard from March the 1st, 1956 through the end of the year.

Q. I see. This was an amount in addition to your basic contract discount; is that not correct? Or to Signal Oil and Gas's basic contract discount? A. Yes, to the four and a half, five and a half. That is correct.

• • • • •  
[5578] Q. Right. What I was getting at is that the total special adjustments in dollars was around a million dollars; is that correct? A. It would have been around that order.

Mr. Mac Laury: You are talking about, counsel, the entire six state area, I believe. You haven't specified any area.

Mr. Hall: No, I don't believe the witness had either.

The Witness: No, that's correct. I just said I had [5579] to paint this thing with a broad brush. I'm dealing with totals.

Q. (By Mr. Hall) Now, I notice here there is a reference in the second paragraph of Exhibit 1706 that "Carl was talking pretty free and easy; and I am not at all convinced that the report is totally accurate." Now, you had indicated that you felt that these Signal Oil and Gas people

were quite reliable over the years, and I assume this is just bargaining that you are talking about?

Mr. Mac Laury: Well, is that a question, counsel?

Mr. Hall: Yes, there is a question mark.

Mr. Mac Laury: Well, I object to the form of the question, Your Honor.

The Court: Yes. You may ask him whether or not he made that statement.

Q. (By Mr. Hall) Well, may I ask for your—whether your own feelings are involved in that particular statement? Is that your expression too? A. No. I think Carl and I were just there lunching, and you see there that Perry Johnson did pin him down because he goes on to find—to establish that—he gets this answer from Carl Zamloch: “It wasn’t just a day to day deal. It would be a continuing deal.”

[5580] Q. (By Mr. Hall) Were these constant requests on the part of Signal Oil and Gas Company a general part of bargaining with them over the years? A. Oh, yes, very definitely. I think I covered that quite thoroughly. All the time from 1952 on in the negotiations or the attempted negotiations of the new contract, which never came to pass, and then again back in the middle forties when we were trying to renew at that time and were unable to do so.

Q. In that letter, there is reference to Mr. Zamloch talking again. He said that, “This company would take all of Signal Oil and Gas Company’s California production of crude oil and would take some Middle East crude too.” Was it a problem with Signal Oil and Gas Company to market their crude at this time? [5581] A. No. They had no problem on the domestic, because, of course, we were buying it. They had—and I don’t know exactly what year—but Signal Oil and Gas had gone into foreign fields here in the Middle East. They had some crude, and Standard wasn’t buying any of that. I don’t even know whether it was available at this particular time. But apparently—

Q. Is it fair—pardon me. A. The inference in this sentence is that at least Carl says that this other company would be interested in it.

Q. Is it a fair statement that Standard Oil Company of California was itself quite self sufficient in crude at this time? A. No, I wouldn't say we were self sufficient. We have always had to purchase crude. We cannot exist on our own production. I would say though by this time, late September, that it wouldn't have been the calamity that it would have been earlier if we had lost it.

• • • • •  
[5593] Q. And your testimony, as I recall, is that the decision [5594] to terminate, is this correct, was around three months before the end of the year? That is, the termination on the Signal Oil and Gas Company's contract. A. I think my testimony possibly was generally in that way. I think it might be accurate to say that I think we were reconciled to the fact, but if you are talking about final decision of the Board of Directors, that would be the final, and that wasn't until much later in the year. I think I testified this morning that I worked up to the very end. And if I had been able to agree with these people on the price of gasoline, why, we certainly would have continued.

[5595] Q. (By Mr. Hall) I see. Is it true that you also testified that the top management had apparently decided to terminate their contract three months before, several months before the close of 1957? A. I think they had reached the thinking that that was the inevitable conclusion if we got nowhere.

Q. Well, I would ask you this then, referring to page 60 of your deposition, the sixth line. The question was,

"When did the company make its decision to terminate this, the Signal Oil and Gas Company contract?"

And your answer,

"It would have been along in the last several months of '57. I am sure that if we had of been able—if I had

been able to agree with those people that that would have changed the complexion; but I am pretty sure our people gave it up as hopeless. After all, I'd been trying now since 1952."

Is that a correct statement? A. I think that is about what I have said now, too, if I could have pulled it out of the hat, why—

Q. It is mentioned in the last paragraph of that Exhibit 1711 the Regal stations, they are the marketing outlet, are they not, for the Signal Oil and Gas Company? A. They are a marketing outlet for Signal Oil and Gas Company.

[5596] Q. All right. A. They are now. You are now asking me for just pretty general knowledge that I as a marketer have and I am not an expert witness on this, but I do happen to know that Regal stations are owned by different people and are supplied by different companies.

Q. But is it not correct that the Signal Oil and Gas Company regards them as their marketing outlet? A. They regard the Regal stations that they are contracted with as a marketing outlet. There are other Regals supplied by others or were during this period. I am completely unfamiliar the last year or so.

Q. Do you have any personal knowledge of the situation up here in the Northwest as regards to the Regal stations, whether they were owned by them or not? A. I have no personal knowledge as to whether they were owned. I am reasonably sure they were supplied.

. . . . .

[5602] Q. Now, wouldn't it be a fact, Mr. Godfrey, that during this entire claim period that the Union Oil Company of California did not sell one drop of gasoline up here in the Pacific Northwest—

Mr. MacLaury: To—

Q. —to Signal Oil and Gas Company? A. I don't know, there is nothing in this evidence that they, or the things that I have looked at to indicate they did in the Northwest.

Q. There is nothing in this evidence that you referred to?  
 A. No, these were deliveries at other places.

[5603] Redirect Examination

By Mr. MacLaury:

[5605] Q. What percentage would that be of the total delivered to Signal Oil and Gas? A. Oh, the amount up here?

Q. Yes. A. I guess about three per cent.

Q. Now, you testified as to certain checks representing these allowances were paid over to Signal Oil and Gas at the end of each quarter in 1957.

Do you recall that testimony? A. That is correct.

Q. And you also testified there was one check that was handed to Signal Oil and Gas in January of '57. Do you [5606] recall that? A. 394,000 and something.

[5607] Q. (By Mr. MacLaury) (Continuing) Now, were these checks constituting these balances calculated on the basis of total gallonage delivered to Signal Oil and Gas in the six western states? A. Yes, plus the possibility of a very minor quantity in Arizona. No, the way to answer your question is, yes, in the six western states it would be the total of their requirements less Arizona. So, I get back there to the six states. No, Arizona would be in the six states. The latest answer is correct. Exclude gasoline supplied from Texas to Phoenix.

[5682] Mr. Tilbury: I would like to read a portion of Mr. Gray's deposition, Your Honor.

(Whereupon counsel Bruce Hall took the stand to answer questions from the deposition of Andrew Douglas Gray.)

[5683] "Q. Would you state your full name for the record, Mr. Gray? A. A. D. Gray.



Q. What do the "A" and "D" stand for, Mr. Gray?  
A. Andrew Douglas Gray.

Q. And your position, sir? A. Manager, refinery bulk sales.

Q. Of what company? A. Union Oil Company of California.

Q. How long have you been employed by the Union Oil Company? A. Thirty-four plus years.

Q. What occupations have you followed for Union Oil Company during that time? A. Original assignment was a truck driver, 1929. Salesman, agent, district sales manager, and division manager, assistant division manager, special representative, and manager, refinery sales.

Q. Is that your present position? A. Right.

Q. Was that your position—was that the position you held in the years from '55 through '58? [5684] A. No.

Q. What position did you hold at that time? A. Special representative.

Q. Under which department? A. Under the refinery sales department.

Q. By October of 1957 were you manager at that time of the refiner and jobber sales? A. No.

Q. Let me just show you a letter or memorandum dated October 30th, 1957. A. Well, I don't remember the exact date of the title chain. The work has been much the same.

Q. By that date, according to the letter, you had become manager of the refiner and jobber sales. A. Right.

Q. What was your particular line of responsibility as manager of the refiner and jobber sales? A. The sale of unbranded products, petroleum products.

Q. Would this be throughout the operating area of the company? A. Yes.

Q. This would be overall supervision? A. Right.

Q. Did you have occasion to deal with the Signal Oil and Gas Company from time to time? [5685] A. Yes."

• • • • •  
"Q. Would you have been familiar with any negotiations that might have been conducted by your company with the Signal Oil and Gas Company? A. Entirely so.

Q. This would be one of the responsibilities that you had?  
A. Yes, sir."

[5691] "Q. What is the next date you have? October 14th? A. '57, yes, sir.

Q. What sort of document is that, in a general way?  
A. This letter was prompted by our desire to be competitive with Standard Oil Company competition, and it was pursuant to the pricing on the increment of gasoline which we had reference to in our letter to Signal Oil and Gas on September 25th.

Q. And was this something you prepared, Mr. Gray?  
A. Yes.

[5692] Q. Was it prepared in the normal course of your activities as head of the— A. Yes.

Q. —Refiner & Jobber Sales? A. Correct.

Q. In the letter you have made a comparison between the prices charged the Signal Oil and Gas supplier, at that time with the price that your company was contemplating offering or was offering, as the case may be. A. Yes. These prices that I have set forth here and the statements which I have made in the letter were prompted by my conversation with representatives of Signal Oil and Gas who gave me this information verbally.

Q. I see. A. I saw no documents.

Q. I take it that when you prepared the memorandum, you were convinced that, in fact, your prices to the Signal Oil and Gas Company were actually somewhat higher than the prices then being charged by the Standard Oil Company? A. This is what I say here.

Q. All right. A. Lower and higher, both.

Q. Did you make any investigation on your own to determine these facts? A. There was no other source of information that I had.

[5693] Q. Did you see invoices or any billings of that kind? A. No.

Q. It was based upon information that was given you by Signal Oil and Gas employees, right? A. Right.

Q. The locations involved are those that appear on the letter, is that true—Rosecrans, Richmond, Los Angeles and San Francisco? A. Right.

Q. Again, it does not apply to the Pacific Northwest, I take it? A. That is right.

Q. In the letter I notice that you mentioned that there was a rebate in the Los Angeles area during the third quarter, in the amount of nine-tenths cents per gallon, apparently given by the supplier of Signal Oil and Gas Company, which I gather was Standard at that time. Is that, again, what was referred to? A. This is what they told me.

Q. All right. The last paragraph, Mr. Gray, would you mind reading that into the record? A. 'Under the circumstances, we feel quite confident that our offer was very realistic and Signal Oil and Gas are only purchasing locally from us because they are held to contractual supplies.' May we also add that in our best [5694] judgment the prices offered by us are the competitive level under which an account this size could purchase elsewhere.'

• • • • •  
[5701] "Q. In other words, Mr. Cadwell's instruction, if it is an instruction, was carried out? A. Well, these were not instructions. These were his comments.

Q. I see. All right. A. This was his request at the time.

Q. Mr. Gray, did you offer Westway's prices to the Signal Oil and Gas Company before this memorandum was written? In other words, did you make a firm offer, yourself, or did you merely discuss this as a possibility? A. I certainly did not make a firm offer without and would not make a firm offer without confirming the acceptance of the offer to management.

Q. This would be something in the nature of a price decision which would require the consent and approval of someone further up the line than your own particular position? A. It would, but generally, and in many instances in our business, we get, at first blush, a refusal, and that doesn't necessarily mean that the situation is dead by a long ways.

Q. I understand. With respect to Signal Oil and Gas and its relationship in the Pacific Northwest, did you obtain approval from anyone further up the line in management to [5702] make a firm offer to the Signal Oil and Gas Company at the Westway price level? A. Not at this time.

Q. Did you at some subsequent time, sir? A. I don't recall."

[5897]

Maxine B. Ross

was thereupon produced as a witness in behalf of plaintiff, in rebuttal, and, having been previously duly sworn, was examined and testified as follows:

[5923] Cross-Examination

By Mr. MacLaury:

Q. Now do you have those gallonage figures before you, Mrs. Ross? A. Which gallonage figures—

Q. The gallonage figures on sale of gasoline to the [5924] Signal Oil and Gas. Now, I think you gave us a figure for total sales in Oregon and Washington. I notice here something that Mr. Tilbury has handed me, which I think he said that you prepared. It shows a figure here for Oregon of some three million, three hundred eleven thousand gallons during the year 1957. Do you have that figure in front of you? A. Yes.

Q. Now, my arithmetic, which has been checked by my associate here, Mr. Kirklín, indicates that that is 3.8% of total sales by Standard to Signal Oil and Gas in this Western area. Would that match up with your arithmetic? A. That would be the percentage that they sold in the State of Oregon alone.

Q. Yes, that is what I mean. A. That could be approximately. I didn't work that figure out.

Q. I know you didn't. And I did, and I just wanted you to check me, and I thought— A. That's the Oregon gallonage.

### B. Excerpts From Plaintiff's Closing Argument

[6083] Now, of course, the Standard Oil Company in this case, in its desire to market its products—we don't blame them for wanting to sell all of their products, I suppose this is the objective of all of us, to try to sell as much as you can in as many different areas as possible. They have gone into this thing in almost a six level basis. They have attempted to keep certain facts—I don't know any polite way to state it other than that—keep certain facts away [6084] from the public. They do not identify, for example, and specifically enjoin Mr. Perkins to make no mention of the fact that he was selling Standard products. They mention that there was a certain market, apparently, that was getting away from them in areas such as Mr. Perkins operated. As you know, he was no—was no Johnny-come-lately to the petroleum business. He had been in this business since 1928 and at the time he made his arrangement with the Standard Oil Company in 1945, he had built up these stations in somewhat the same areas. As a matter of fact, there are very few real additions as far as his own service station constructions during the period of the Standard contract. He had an existing market. This was a market that he had established. He was selling a different brand, to be sure, and as you recall, perhaps from—although it goes back several weeks and months now, I realize, he indicated that the reason he got into this arrangement in the first place was because they were thinking about building their own terminal in North Portland.

As a matter of fact, he had even gone to the City and made arrangements to obtain this terminal so that he could then obtain his own supplies from the outside and so then he would become a source of competition to the Standard Oil Company, and they didn't want that. They wanted to be sure that this market was tied down as well, so the arrangement [6085] was made. And this is the arrangement that he was confronted with.

• • • • •



[6087] I wonder if we have 1550 here, the large chart? Mr. Roberts, is that up yet? If not—oh, it is over there. Yes, if you would move it over, please.

. . . . .

[6088] Now, of course, defendant has, in making this computation, carried it out to say .0038, .0068, .00437. I hope nobody will be confused by this. Frankly, I was in the beginning and still am occasionally, because there is sort of a jump backward from the pennies and dollar signs and the mills and the like so that sometimes you find you are [6089] talking about tenths of a cent instead of ten cents and the like.

[6090] Mr. Tillbury: (Continuing) I hope nobody will be confused by these figures, because they don't have it labeled on the dollar basis.

The evidence, as indicated, there is no contradiction of this, that, when this figure appears, .0038, .0068—and so forth—I think we can all understand that this point, perhaps in the beginning it was a little hard to appreciate this factor; the fact is that when we talk about a tenth of a cent in this business, it is important, it is really important because of the quantities that were being purchased because when we project that over the sales that were being made by Clyde Perkins—as I recall Mr. McDaniel's chart indicates purchases of around 19 million gallons, multiplying one-hundredths of a cent in terms of those quantities can be very substantial, and throughout this period the losses, discrimination, with one exception, which I will briefly touch upon, was .38 of a cent. I take it back, .3635, and the highest was .43 cents.

. . . . .

[6094] Now, the the only question is to the magnitude of the discrimination, and if you take our approach, you would add an additional .33, a little more than this, cents onto the figures because Standard in making these computations, in the figures I have mentioned, you will see at the head

of their column for Signal Oil and Gas they have Portland, they say Willbridge. I take that back, it was for Portland deliveries; at the top of the column they say not Portland, although there were in fact some deliveries in the City of Portland, as you know; for which there were no freight adjustments of any kind.

They put at the top of their column Vancouver destination. In other words, they have picked out the one area. Now, I don't want to mislead anyone. We don't question the fact that Vancouver was a very substantial area to us. That this represented our largest marketing area, there isn't any question about that, and we don't question the fact that this station on North Burgard Street was not our biggest station, it wasn't. It wasn't the largest operation we had, by any means. Nevertheless, the reason we feel this is a proper place to start as against Vancouver is that here we can compare apples. We have the same sort of animal. We have the same basic commodity, we have the same point of delivery, we have the same conditions on the same day because, for example, we see no reason to think [6095] that if we were receiving this freight adjustment over in Vancouver that if Signal Oil and Gas Company decided to build over there, too, they would not receive a similar type of adjustment.

But, nevertheless, we have attempted, and of course here is where we differ from them, we would add to these discriminations which they have admitted, very few minor exceptions, the .33 factor which will raise the amount of discrimination by quite a considerable margin. In other words, one-third of a cent. Now; we haven't stopped at that point, however. We acknowledge the fact that the amount of gallonage going out to these different locations was different and we acknowledge the fact that there were differences in freight rates and we certainly acknowledge the fact that we received certain freight adjustments for those various destinations. In some areas, as it is now conceded by both parties, it was to Standard's advantage

to ship—actually, Standard didn't do it, you know, they assigned on the loading ticket at Willbridge its destination and common carrier took it there. It did vary where the destination was.

[6153] Now, I would like to say this: These figures that Mr. [6154] McDaniel used were, I believe the evidence would indicate, and I think if this schedule reflects it, conservative. Now, that sounds like a lot of money. It is a lot of money, sure. There is no question about it. But the figures he used are very conservative. And I think I can say that in all good conscience and very clear conscience in this case, because there are a lot of factors here that he did not add in in making his computations that do represent losses in a very real sense. For example, the most obvious one I am sure you are aware of is the fact of subsidy and the fact that he did not receive the subsidy program. Now, there was testimony on the part of the president of the Signal Oil Company, Mr. Godfrey, that they gave throughout the entire claim period subsidies that exceeded one penny to all of their dealers wherever considered. Now, if you consider the nineteen million plus gallons that were sold to Mr. Perkins, if he had received the same subsidy, he would have received an additional \$190,000 from that point on. If you consider the fact that the Chevron dealers had another rather decided advantage, and that is that they didn't have to worry about the product shrinking. For example, it was delivered to the doorstep by a Standard Oil truck, as the evidence indicated. They didn't have to go out and rustle up transportation and go down and pick it up. They were delivered to the door. Therefore, when they [6155] got it on a net figure. Our product had to be stored, and in many cases for many months.

[6204] Mr. Hilliard: (Interposing) Excuse me, Counsel, for the interruption. We would object to any reference to

Dr. Mund's testimony because we were not permitted on cross-examination to apply any conclusion he had to the facts of this case.

In other words, they asked him to apply his own opinion to the facts of this case. His testimony was just in the abstract and never connected to this factual situation.

The Court: You may continue but I will ask you not to represent to the jury that you are reading his record.

Mr. Tilbury: All right, sir.

The Court: I want you to represent to the jury that this is your understanding of his testimony or this is your recollection.

Mr. Tilbury: Yes, sir, I will do so. Thank you. I thought I made that clear. If I haven't, I will do so. These are notes that have been made and if this is not in accordance with your recollection, then please disregard whatever these notes may indicate. As far as I know, they are accurate. It is possible there may have been an inadvertent error.

Dr. Mund said this, and I won't go all over it—I think there are two or three things here that are quite pertinent.

This is Transcript 2506, Mr. Hilliard, and 2508.

[6205] The term "price discrimination" went from popular use into economics, business, and the law. And Webster's Unabridged Dictionary describes the word generally as making a distinction, making an unfair or injurious distinction. This is discrimination. In relation to price, it would mean making a difference in price, charging some people a higher price, others a lower price, for the same class of goods under substantially the same conditions. In the first place, experience shows as business practice it may be practice between persons. A situation which a supplier charges some people a higher price and some people a lower price. In price discrimination there are always two prices, a higher price and a lower price, for the same class of goods under substantially the same conditions and discrimination is contrasted with competition in an open



market where all customers buy at the same price. It is the reverse or the negative of competition. Discrimination and competition are mutually opposite.

Now again later he said, page 2515, according to my notes—I again hasten to add these are simply our notes. The testimony of leaders in the field of economics going back to Professor Tousigg at Harvard, Professor Jacob Viner, Chicago, now at Princeton, Professor Fedder at Princeton, the Canadian Combines Commission in Canada, and my own writings, as well as those of others, have developed [6206] the generalization that price conditions, that price discrimination as a business practice can arise and exist only under conditions of some degree of monopoly power. In other words, the conclusion is that price discrimination and monopoly are Siamese twins. You do not find price discrimination without some degree of monopoly. Again he defined price leadership, and I won't take your time to go through that, because I think you probably recall the testimony. Finally he said at page 2518, so to answer your question, when competing customers have higher—in the case of competing customers, one has higher costs because of price discrimination, this chain of events inevitably arises and develops and it was for this reason that Congress took steps to pass laws against discrimination because under these conditions small business can't survive. Small business cannot survive in a regime of discrimination; it goes out for the reasons I mentioned, and if we are going to preserve small business, we have to have laws to prevent this sort of thing otherwise small businesses would go out regardless of its efficiency.

Now, I don't know what I can add to the observations of Dr. Mund. I am sure anything that I would say would be trite under these conditions, and I suppose it is a matter of common sense.

[6400] Mr. Hilliard: Yes. We will. I think Mr. MacLaury has one matter to call to Your Honor's attention.



Mr. Mac Laury: In view of Your Honor's changing the gross profits and net profits, we thought that the McDaniel exhibits should be withdrawn from the jury.

Mr. Hilliard: Those are on gross.

Mr. Mac Laury: Those are on gross profits.

The Court: Don't they have to recognize them? I told [6401] them they would have to charge them.

Mr. Mac Laury: The problem is there is no evidence in the record as to what expenses they could deduct from the gross profits.

### C. Defendant's Objections to Instructions

[6420]

#### Defendant's Exceptions

Mr. Mac Laury: The defendants, Your Honor, would except to the submission of a form of special verdict to the jury providing for the assessment of damages on the second cause of action in behalf of Perkins Oil Company of Oregon on the following grounds: One. The Statute of Limitations had run against the claim when first asserted in this action. Two. By his response to admission of fact number 6 and responses to interrogatory of defendant, plaintiff has barred himself from and has waived this claim. Three. The complaint may not be amended under Rule 15-C or any other provision of law—

The Court: May I interrupt just so I can follow you. This is the first time this has been urged, is it not?

Mr. Mac Laury: No. This is in line with our very basic position taken with the Court at pretrial conference.

The Court: I understand. I understand.

Mr. Mac Laury: Just—

The Court: Yes, I understand.

Mr. Mac Laury: Just the assertion of the separate claim.

The Court: I thought it was something that came up different—

Mr. Mac Laury: No.

The Court: I understand.

[6421] Mr. Mac Laury The complaint may not be amended under rule 15(c) or any other provision of law so as to

relate back the claim of the Oregon corporation to the time of the commencement of this action. Four. The claim was not asserted in the complaint. And five, the Oregon corporation is not a purchaser from Standard either directly or indirectly within the meaning of the Robinson-Patman Act or the authorities construing that Act, such as the Chemstrand, C-h-e-m-s-t-r-a-n-d, or American News cases.

The defendant would also—does also except to the submission of the form of special verdict to the jury providing for the assessment of damages on the third cause of action of Perkins Oil Company of Washington for all the reasons and on all of the grounds stated in support of defendant's objection to the submission with respect to second cause of action in behalf of Perkins Oil Company of Oregon. Your Honor, that is with respect to the third cause of action. Is the Court sufficiently apprised of our grounds?

The Court: Yes, I follow you.

Mr. Mac Laury: The defendant excepts on the same grounds and for the same reason to the submission to the jury of the form of general verdict insofar as the general verdict is intended to include the aforementioned second [6422] and third causes of action or claims on behalf of the Perkins corporations.

[6423] Mr. Mac Laury: Defendant excepts also to the Court's instructions given to the jury on the grounds that said instructions failed to include defendant's written requested instructions heretofore filed with the Court and numbered as follows:

1, 2, 2A, 3, 4, 5, 8A, 10, 12 Revised, 12A, 14 Revised, 14A, 23, 24, 25, 26, 27, 28, 29, 29A, 30, 31, 32, 33 Revised, 34, 35, 36 Revised, 37 Revised, 37A, 38 Revised, 40, 41, 42 Revised, 43, 44 Revised, 44A, 44B, 45 Revised, 45A, 46, 47, 48 Revised, 48A, 49, 50 Revised, 50A, 51 Revised, 54A and 54A-1, 55 Revised, 56 Revised, 57, 58, 61 Revised, 62 Revised, 63, 64, 65, 68, 69, 70 Revised, 72 Revised, 73, 73A, 74, 75 Revised, 76, 77, 78, 79, 80, 81, 82 Revised, 84 Revised,

85A, 86, 90, 90A, 92A, 92B, 93, 93A, 93B, 96, 97A and 98A.

Defendant Standard would further except to the Court's instructions given to the jury on the grounds that said instructions failed to include in the form requested in writing and filed with this Court the following Instructions:—

The Court: You mean I can't make up my own?

Mr. Mac Laury: Oh, yes, Your Honor. Some of the defendant's instructions were given, but revised by the Court and I have five or six here. For example, Instructions 15, 16 and 17, the Court left out some of the elements.

[6424] The Court: I see what you mean. I see what you mean now. Not giving all of your instructions.

Mr. Mac Laury: And then some of them, those that I just mentioned, were those that the Court had denied entirely, and then these that I am about to list are instructions not given, modified.

The Court: I see.

Mr. Mac Laury: I thought I better state the grounds for those.

The Court: Well enough.

Mr. Mac Laury: Instruction No. 9, the Court denied the last sentence of this requested instruction. That should be Instruction No. 9 Revised. The Court denied the last sentence of this requested instruction and this denial permits the jury to find a timely oral assignment. It is the defendant's position, and has been since the commencement of the case in chief, that there is no evidence in the record of such an oral assignment nor evidence from which an inference of such may be reasonably drawn.

Instructions 15 Revised, 16 Revised and 17 Revised, the Court denied the first element of these instructions, to-wit, the language in each reading (1) "that he was a purchaser of gasoline from Defendant Standard and not a consignee who received gasoline on consignment." As we advised the Court during our argument on December 13th, the [6425] 1953 and the 1956 contracts are contracts of consign-

ment and not contracts of purchase and sale, in the defendant's view.

The evidence shows the contracts were performed in accordance with their terms. The authorities including *Students Book Co. v. Washington Law Book Co.*, DC Cir 1955, 232 F2d 49, and others including the statute itself, provide that discrimination to come within Section 2 of the Clayton Act must be between two purchasers. We think that on the state of the record that the Court should instruct as a matter of law that Clyde Perkins is not a purchaser within the meaning of the Act. Failing this, it is defendant's position, and we urge the Court should at least submit the question as an issue of fact to the jury. By failing to include in his instructions the omitted language which I have referred to, the Court has failed to submit this question of fact to the jury, and has ruled as a matter of law that under the facts of this case Clyde A. Perkins is necessarily a "purchaser" within the meaning of the Act.

Instructions 18 Revised, 19 Revised and 20 Revised. The Court also denied the first element of each of these instructions, to-wit, the language "that these corporations were purchasers of gasoline from Defendant Standard." It is the defendant's position that the indirect purchaser rule as set forth in the *Chemstrand & American News* cases [6426] does not apply to the Perkins corporations and the facts in this case.

It is further defendant's position that the evidence shows that Standard was not even aware of the arrangement between Clyde Perkins and the corporations and that there is no basis in the evidence for the Court's ruling that it is a matter of law that the corporations were purchasers within the meaning of the Robinson-Patman Act. In light of the Court's ruling that Clyde Perkins as a matter of law was a purchaser, we urge now, as we have urged before, that the corporations cannot also be purchasers from Standard of the same products and that the Court should rule as a matter of law that the corporations are not pur-



chasers from Standard within the meaning of the Act and on the basis of the present record in this case.

Failing to do so, the Court should submit the matter, it is our position, to the jury as a question of fact. By omitting from its instructions the first element in defendant's Requested Instructions 18 Revised, 19 Revised, and 20 Revised, the Court has denied our request to submit this fact question to the jury.

Defendant further excepts to the Court's modification of defendant's Requested Instruction, 18 Revised, 19 Revised and 20 Revised, by omitting therefrom the last clause reading, "(6) That these corporations executed written assignments of their [6427] claims against Standard prior to the bringing of this lawsuit on March 2, 1959." We urge this exception on the following grounds: First, there is no evidence in the record of an oral assignment and no evidence from which a reasonable inference of an oral assignment of the corporations to Clyde A. Perkins can be drawn.

Further, there is no evidence of either a formal or informal meeting of directors or stockholders of the corporations at which such an oral assignment was made or discussed, and there is no evidence in the record that Clyde A. Perkins ever expressed an acceptance of a oral assignment.

The defendant further excepts to the modification of defendant's instructions, 16, 17, 19, and 20 Revised—they are all revised—16 Revised through 20 Revised, on the grounds that Standard, and in this instance, the Court, I have reference to the deletion of the first clause of the second clause, which reads: That Perkins Oil Company of Oregon and Perkins Oil Company of Washington, or either of them, were engaged in the business of retailing gasoline to the consuming public. And with respect to 17 revised, 18 and 16 revised the deletion of the language that plaintiff was engaged in the retail sale of gasoline for the consuming public. The grounds of these exceptions are that it is defendant's position that Standard may reasonably sepa-



rate its [6428] customers into accepted trade classifications, such as jobbers, wholesalers, and retailers, and may treat each classification differently with respect to the furnishing of services or facilities or payments by Standard for services and facilities furnished by its customers. By omitting the second clause from these instructions, 16, 17, 19, and 20, all revised, the Court has taken the fact question from the jury whether plaintiff or Perkins Oil Company of Washington, or Perkins Oil Company of Oregon are properly considered to be in the same functional class as Standard's branded dealers, Chevron and Signal, and we request that this question be submitted to the jury.

With respect to Defendant's Instruction 21, we except to the modification by the Court of this instruction, where the Court added the language, "And which did not result from conditions created by Standard" it is our position that regardless of conditions in the market created by Standard plaintiff cannot recover in this action because of inability to compete with customers of competitors of Standard. Further we except to this added language on the ground that there is no evidence showing or which may support the inference that any price war situation or depressed market in Portland or elsewhere was proximately caused by any act of Standard whether it be price discrimination or otherwise. In this respect we point to the evidence that shows that [6429] Regal was not a purchaser from a customer or purchaser of Standard but was twice removed.

We except to Instruction 38 Revised, as amended by the Court, and in particular to the language added by the Court, "Or later allowed during the claim period." This refers or at least could be construed by the jury to refer to an allowance extended to Signal Oil and Gas Company by Standard in January, 1957. This adjustment cannot have had any effect on competition in Portland or the vicinity during the period August, 1956, through December, 1956. The later adjustment in January, 1957, was not a part of

or a deduction from the price charged by Standard to Signal Oil and Gas during 1956. It therefore could not have been used during that period by Signal Oil and Gas with any competitive effect, nor with any injury resulting to plaintiff. It could not have been used by Signal Oil and Gas, Western Hyway, its customer, or the customer of the Western Hyway, Regal Stations Co., to affect the market in any way in 1956 or to compete with or injure plaintiff or the Perkins corporations.

With respect to Instruction 85 Revised, which was given by the Court in an amended form, we except to the elimination from this instruction of the last two sentences on the following grounds: Acts of Regal are the aspects of this case upon which plaintiff relies probably most strongly. [6430] We contend that the evidence shows that Regal did not affect the market outside Portland. In any event we strongly urge that we are entitled to an instruction withdrawing from the jury any question concerning damage to plaintiff or Perkins Oil Company of Oregon's business in Portland since the evidence shows conclusively that they did not sell gasoline at retail or wholesale in Portland which could have been affected in any way by Regal. By the time Regal entered the Portland market, plaintiff had ceased doing business in the retail or the wholesale level in Portland.

[6431] Mr. Mac Laury: With respect to Defendant's Instruction No. 92, defendants except to the elimination from the Instruction 92 of the last sentence on those grounds that the last delivery, the last date of delivery of any products including gasoline by Standard to Clyde Perkins was December 2, 1957, the evidence shows that Westway was supplying Perkins' stations on December 2 of 1957.

It is our position that there can be no recovery with respect to beyond the period in which a contractual relationship between buyer and seller would entitle the buyer to delivery of the products involved.

With respect to Instruction No. 97, we except to the addition of Clyde A. Perkins as one of the lessors of properties on the ground that Clyde A. Perkins was not a marketer of gasoline, and he was not within the target area of alleged discrimination, and he is not entitled to individual recovery of damage as a non-marketing, non-operating landlord.

The Instruction 97 to which I have just referred refers to the goodwill of going concern value of properties in its original form at least by Perkins Oil Company of Washington; and an exception is taken to the inclusion along with Perkins Oil Company of Washington, the plaintiff Clyde A. Perkins.

We except to the reading by the Court and the instruction [6432] by the Court to the jury as pertinent portions of the Act involved in this case, Sections 13D and E of the Robinson-Patman Act.

It has been defendant's position from the outset that these claims asserted by plaintiff and the two corporations are barred by the statute of limitations because they were not asserted until some time in July, July prior to the first trial of this case; and they are not mentioned nor alleged in the complaint; and we refer to the complaint upon which this action was tried, paragraph 7.

We would further now with respect to the Court's Instructions, we would except to the instructions given in the form of Defendant's Instruction No. 7 and in particular to the statement in the second sentence thereof reading: "After 1952, Perkins of Oregon, a corporation, and Perkins of Washington, a corporation, and Clyde Perkins, marketed these products," and the three marketed these products. I believe those were the words the Court used, and it has been our position throughout this proceeding, your Honor, that Clyde A. Perkins did not and was not an active marketer of any of the petroleum products delivered to him by Standard.

Again, with respect to the Court's Instruction concerning the meaning of the terms "Purchasers" and "Cus-

tomers" having an instruction by the Court to the jury that the Court has determined as a matter of law that Clyde Perkins [6433] individually and Perkins of Oregon and Perkins of Washington and each of them were purchasers within the meaning and use of that term as used in the Act, we would object and except to that instruction on the same grounds as heretofore stated with respect to the Court's modification of Defendant's Instructions: 15 revised, 16 revised, and 17 revised; and a denial by the Court of the first clause in those three instructions. The same grounds were also repeated in respect to defendant's objection to the modification by the Court of Defendant's Instructions 18 revised, 19 revised, and 20 revised and elimination therefrom of the first clause from those instructions.

The defendants would also except to the Court's Instructions and the language of the Court's Instruction connected with the Court's ruling that Clyde Perkins, Perkins of Oregon and Perkins of Washington are purchasers within the meaning of the Act, and specifically to the language of the Court: "That the dealers and outlets of Clyde Perkins individually were customers of those purchasers, respectively," which is an instruction to the effect that Clyde Perkins operated service stations and outlets through dealers and that he individually serviced dealers as customers.

Defendants also except to the same instruction, and in particular the implication of the language in that instruction [6434] which would indicate and appear to assert that certain dealers and possibly Regal Stations Co. was the customer or purchaser of Signal Oil and Gas. It is our position we think that the evidence shows, particularly the testimony of Ross Grover—Ross Grover—that Regal Stations Co. was the customer and purchaser of Western Hyway and not the Signal Oil and Gas Company.

We further object to the Court's Instruction immediately preceding Plaintiff's Instruction No. 37 which states that "Clyde Perkins individually and Perkins of Oregon and



Perkins of Washington were customers of Standard, were both customers of Standard" within the meaning of that term as used in the Act, this apparently being intended to bring Clyde Perkins and the two corporations within Section 2D of the Act and as proper claimants under 2D of the Act.

Defendant's except to Plaintiff's Requested Instructions as given by the Court in modified form, and particularly to the language asserting that plaintiff Clyde Perkins was a purchaser within the meaning of that term of the Robinson-Patman Act and that the language instructing the jury to disregard testimony in consideration of whether or not these contracts were a consignment or purchase and sale.

It has been our position from the outset of this proceeding that the contract between Clyde A. Perkins and Standard Oil Company of 1953 and 1956 were contracts of [6435] consignment.

The evidence in the case shows the provisions of those contracts were in fact carried out, and there was no difference between the performance by the parties under the contract and the terms of the contract; and that Clyde A. Perkins would not be the proper one to consider as a purchaser within the meaning of the act; that, if anything, we would urge the Court to, and have urged the Court to rule as a matter of law that Clyde A. Perkins is not a purchaser within the meaning of the Act, and that in any event at the very most it was a question of fact for the jury.

Your Honor, we the defendants also except to the Court's issuance of Plaintiff's Requested Instruction No. 22, which in substance pointed out or directed the jury that in computing or determining the final net price charged by Standard to competitor of Perkins, the jury must first deduct all discounts, allowances, payments, rebates, and taxes made and allowed within the claims period. The grounds for our exception are that the instructions allow a deduction from the price, of payments, allowances, dis-



counts, and rebates made subsequent to the date the price was in fact paid, which were not a part of the terms of sale at the time the sale was made.

We have specific reference to payment in January of 1957 of the sum to Signal Oil and Gas.

The Court: I understand. I have to face up to that rule. [6436] Mr. Mac Laury: And lack of impact on competition.

We also except to the language "A competitor of Clyde Perkins" on the ground that Clyde Perkins was not a marketer; and further, the net price should be the same whether applied to Perkins or Signal Oil and Gas Company, i.e., freight allowances should specifically be deducted from the price to Perkins as well as all other deductions.

The Court will note the instruction states simply that in computing or determining the net price charged by Standard Oil Company of California to a competitor of Perkins, such deductions should be made.

We think the deductions should also be applied.

The Court: You didn't—

Mr. Mac Laury: The deductions should also be made from the price charged from Standard to Perkins.

The Court: You didn't put that in your request, did you? I thought—

Mr. Mac Laury: We had no instructions on net price.

The Court: Your net price I think is identical with each other except the plaintiff asked for taxes which you didn't.

Mr. Mac Laury: I will find out in just a moment, your Honor.

The Court: I think you will find—

Mr. Bonyhadi: Your Honor, as I recall, our requested [6437] was on net price and was a paraphrase of one of the contentions of the defendant and out of the pretrial, a contention of the plaintiff.

Mr. Mac Laury: Well, no, your Honor, you see we don't name any particular party, our No. 38. No. 38.

Well, our 38, your Honor, was given.

The Court: I put in "taxes", didn't I?

Mr. Mac Laury: Yes, and you also inserted the language "or labor allowed during the claim period."

The Court: Yes, I understand I added that.

Mr. Mac Laury: Thereby subject to our first exception or the grounds for the—the first grounds for our exception.

The Court: I understand that. You certainly may have it.

Mr. Mac Laury: You requested that. That is a phrase.

Now, with respect as to the Court's further instruction on the subject of assignment or transfer of a cause of action, now, we do except to the language by either a written instrument or by "parol arrangement". That is by words or the conduct of the assignor or the party making the transfer and the assignee or the party accepting the transfer.

[6438] Mr. Mac Laury: (Continuing) Again, our basic ground is that no contention has been made here until the commencement of defendant's case in chief that there was a parol or oral assignment. It is our position that proof of oral assignment first brought forth at this time cannot be related back to the commencement of this action so as to avoid the Statute of Limitations. The further ground is that there is no evidence in the record of oral assignment.

Then going on to the Court's further language in which the Court defined an oral assignment—Your Honor, if you will permit me a moment, I think the Court added some additional language to this over the original draft that I had.

(Whereupon an off the record discussion took place between co-counsel for the defendants.)

Mr. Mac Laury: Well, we would except to the Court's language that "a transfer of the cause of action from one person to another is purely a matter of mind and intent on the part of the person making the transfer to make it, and also on the part of the person to whom it is transferred, whether to accept—" Now, I know there is some further language that my notes show, and I can't—

The Court: I think you will find a copy of that.

Mr. MacLaury: And that it requires mutuality of—

[6439] The Court: I added that.

Mr. MacLaury: And a meeting of minds?

The Court: Meeting of minds. Mutuality. Yes, I added that on. I went back to law school when I was reading that.

Mr. MacLaury: Well, our major objection here, Your Honor, is that we believe that an oral assignment must be expressed. It can't be just a matter of intent and a state of mind, that it must be an expression by the assignor and there must be an oral acceptance by the assignee.

In connection with the same instruction, we also except to the Court's language to the effect that a corporate officer may make an oral assignment or transfer a cause of the corporation. The grounds for this exception is that an officer or an executive cannot assign a right of the corporation without consideration unless approved by the directors or shareholders, and there is no such approval to this effect and there is no evidence of such approval or of any such joint action by any of the directors or shareholders. On the further grounds, Your Honor, that an oral assignment requires more than that the officer or the corporation have the mind or the intention to assign or transfer." This I believe I covered. And the same is true as to the acceptance.

Now, Your Honor, we do—again, I think the Court has changed in its instructions the draft that we originally [6440] had, and I have reference now to plaintiff's requested instruction 41, which relates to the meeting of competition defense. The language as I have it of the instruction was in sub-paragraph B "There must have been a definite"—and I quote, "There must have been a definite offer which was extended by a competitor of defendant Standard to a customer of the defendant." Now, it is our position that there need not be a definite offer but only the reasonable belief by Standard that a lower price was offered to Standard's customer by a competitor of Standard and

that Standard acted in good faith and on the reasonable belief that its lower price was extended to meet the competitive offer to Signal Oil and Gas.

The Court: I am greatly troubled about that.

Mr. MacLaury: Now, I do have some notes I scribbled quickly, and I cited for authority Federal Trade Commission versus—

The Court: No, I think I gave you the most favorable instruction that I could possibly could under your evidence. For example, supposing that Signal Oil and Union got together and they say, "Well, let's go rooker on Standard."

Mr. MacLaury: Go what?

The Court: Go rooker was the expression that I used.

Mr. MacLaury: Oh, yes.

The Court: And they went and told Standard that they [6441] got this offer from Union when they didn't, in fact, have it, but Standard had every reason to believe they had it. I covered you on it.

Mr. MacLaury: Are we covered?

The Court: I think that you are. I think in your own requests, you will read there that one was made or that you had reason to believe—

Mr. MacLaury: Well, I do see an addition, and as I read it now—

The Court: Let's see if I can find that now, because I thought—here is what the Bigelow case says about it. Is it Bigelow? No, your own case, Standard Oil. For example, the Court said, "If a large customer requests his supplier to meet a temporary lower price offered to him by one of his competitors, the seller might well find it essential as a matter of business survival to meet the price rather than lose the customer."

Mr. MacLaury: Yes.

The Court: That is what this testimony was here; that, in effect, Signal Oil came and told us. So I tried to tailor yours to cover that. What is the number of your—

Mr. MacLaury: It is plaintiff's requested instruction 41. My notes indicate, Your Honor, that this language was



given by the Court, and I quote, "There must have been a definite offer which was extended by a competitor of [6442] defendant Standard to a customer of defendant."

The Court: Now, those are the conditions that I read.

Mr. MacLaury: Then my notes indicate that the Court then went on to state later that "Standard cannot use this defense unless its customer, Signal Oil and Gas"—"unless Standard believes that its customer, Signal Oil and Gas, did in fact receive a competitive offer from another." It seems to me that there is a conflict in the language of those two sub-paragraphs.

The Court: Now, listen to this. Here is what I said: Now, I gave the premise that "there had to be a definite offer, you must be aware of it, you must have acted in good faith." Then I said, "Standard cannot use this defense unless it knew or was given to reasonably believe while acting as a prudent person in good faith that its customer did, in fact, receive a competitive offer."

Mr. MacLaury: Well, I would have no objection to that language.

The Court: I wouldn't think so.

Mr. MacLaury: But the previous paragraph after B, that reads—

The Court: Well, now, that is what the case said.

Mr. MacLaury: There must have been a definite offer?

The Court: That is what they say in pinpointing it. Your own case of Standard against the Trade Commission says [6443] that.

Mr. MacLaury: Well, Your Honor, we will, for the record, let our exceptions stand to—

The Court: Yes, I think you are entitled to it, but I did my best to tailor it to your facts.

Mr. MacLaury: Yes. All right.

Then we come to plaintiff's 49, which are the—

The Court: Yes. I interpreted those instructions. My interpretation was that ordinarily there has to be an offer made and there ordinarily would be an offer to meet, and



you wouldn't have anything to meet. So that is the premise. But somebody comes around and defrauds you or tries to pull your leg, and you didn't have an offer but he tells you that he did and he leads you to believe so, I covered you on that situation.

Mr. MacLaury: Well—

The Court: I tried to.

Mr. MacLaury: May we go on to the plaintiff's instruction number 49, which deals with the question of measure of damages. Well, it was our position, Your Honor, that it was in error to say in the preliminary portion of the instruction that the Court is instructing as to the measure and method of determining damages and then list elements—the elements which were requested by plaintiff in his instruction 49, which it is our position is not the [6444] proper measure of damage. I think that has been consistently our position throughout this case.

The Court: Yes.

Mr. MacLaury: And we don't think that this area, which we believe would likely mislead the jury, could be corrected by simply labelling this list of measures of damage or guides in plaintiff's requested instruction number 49 as simply plaintiff's contentions or their claims. We have already pointed out that we see a conflict between the first paragraph there, the amount, which begins with the language "the amount of price differential on gasoline sold by defendant Standard Oil to plaintiff." The conflict between that and the instruction, I think, is defendant's instruction 81 on the automatic damages.

The Court: I recall.

Mr. MacLaury: Our grounds generally for objecting to or excepting to 49 are that the automatic damage rule is invalid; and, further, during much of the claim period, there was no competition between plaintiff or his assignors and Signal Oil and Gas or its customers.

Secondly, Your Honor has corrected the gross profits. I believe that the second paragraph now reads, as Your

Honor gave it, the loss of profit rather than loss of gross profit.

The Court: I struck "gross".

[6445] Mr. MacLaury: Yes. "Loss of gross profit on volume of gasoline sales which plaintiff estimates and claims were lost by reason of such discrimination." Well, we submit that it isn't plaintiff's estimates and claims which would be the proper measure of damages here, but only those net profits lost which are proven by a preponderance of the evidence. Again, we would take exception to the use of the loss of profits estimated on the volume of fuel oil sales as a measure of damages. I have reference to the ruling that there was no discrimination with respect to the sales of fuel oil. And I realize that the Court has in mind the loss of fuel oil sales which can be tied in to the loss of gasoline sales caused by discrimination.

The Court: Yes. There was some testimony on it.

Mr. MacLaury: But we feel there is nothing in the record to justify that.

The Court: I understand that.

Mr. MacLaury: We would except to the reference to the so-called restroom and maintenance allowances, again on the grounds that this appears to be merely a re-statement of the automatic damage rule, and the only proper measure of damages recoverable under Sections 2-E and 2-D are those damages reasonably certain in amount which can be traced to an adverse impact upon plaintiff's business and property.

[6446] Now, what this instruction appears to do is simply lump here as a measure of damage all restroom and maintenance allowances and the furnishing of credit cards services and lease it up to the speculation of the jury, without any guidance or direction that there must be some connection between these allowances and the damage to the plaintiff. We don't believe that this is tied in clearly here in this instruction to the 2-D and 2-E claims.

Again, in the next portion of that instruction, which re-

fers to the going concern value of the business, the decrease, if any, in the going concern value of the business by reason of the claimed discrimination with respect to stations owned and leased by plaintiff Clyde Perkins. Clyde Perkins, we submit, individually has no claim as a landlord. He has no claim as a marketer, and a decrease in the going concern value of stations owned or leased by him is not a proper measure of damages. Further, insofar as that instruction refers to stations leased by Perkins Oil Company of Washington, or either of them, and it states here that the decrease in depreciation, if any, in the going concern value of the fuel oil business of the plaintiff Perkins and the two corporations, we submit that there has been—again, there is no discrimination in the sales of fuel oil, and thus any depreciation in the value of the fuel oil business of the plaintiff or its assignors [6447] is not a proper measure of damages here. There is no evidence here that a depreciation in the going concern value of the fuel oil business was proximately caused by a discrimination in the prices of gasoline which would warrant such a measure of damages being included among these instructions.

[6448] Mr. MacLaury: (Continuing) So far as the leasehold interest of the Perkins Oil Company of Oregon and Perkins Oil Company of Washington, in line with Your Honor's other instructions on the evaluation of going concern and good will, we submit there is no evidence here that those leasehold interests had a going concern or good will value or that the same is depreciated. "

Now, with respect to the payments subsidies or allowances not reflected in other factors taken into consideration by you, and I am referring to the language of the Court, but which you find on the basis of the evidence before you, and the Court goes on to refer to payments by defendant Standard to Signal, it is not clear nor is it stated whether these factors are to be taken into consideration as price discriminations under Section 2(a) or in connection with 2(d).

If under 2(d), there is no consideration given to the fact that plaintiff or his assignors were in different functional trade classifications from Standard's branded dealers and it is our position that the instruction indirectly implies that price or assistance or subsidies made to Standard dealers are a discrimination, even where the price to such dealers after the deduction of such assistance is still higher than the amount paid by Perkins.

Now, again, the next paragraph, beginning with the language, "any services and facilities furnished or agreed [6449] to be furnished by defendant Standard Oil—we submit that the paragraph again incorrectly implies that the jury may apply the automatic damage rule and further disregards the reasonable classification by Standard of its customers, in particular its Chevron and Signal dealers and as separate and apart from jobbers supplied by Standard. We further except to this entire instruction on the measure of damages on the ground that although the instruction states that plaintiff may not recover the same element of damages more than once, the jury is not given any reasonable guide as to how this duplication of damages is to be avoided, nor does the jury have any—

The Court: Wasn't that your own requested instruction?

Mr. MacLaury: No, Your Honor.

The Court: Maybe I jumped the track a little. About doubling up?

Mr. MacLaury: We had one instruction with respect to doubling up on good will and loss of sales. This is just a—this has seven categories of measures of damages, in our opinion it would leave the jury at sea as far as any real direction in how to estimate with any certainty the amount of damages that plaintiff should recover. Nor is there any real direction as to the method the jury may use to calculate the recoverable damages.

I have one more, I think. No, there are several more [6450] exceptions. It is getting late, I think probably I ought to finish up this evening. Does Your Honor agree?



The Court: You might as well finish and let the reporters—

Mr. Bonyhadi: We won't need it today.

Mr. MacLaury: With respect to Plaintiff's Requested Instruction No. 38 given by the Court, the measure of damages referred to there, it is our position it is not one based on probable, it is not one properly based on probable and inferential proof. The measure should be described as reasonable estimates or approximation by the jury of the actual damages suffered as established by a preponderance of the evidence.

Now Plaintiff's 39, which was given by the Court, we submit the instruction should be limited to sales of gasoline. That instruction refers to the sales of petroleum and related products by Perkins and states if the jury finds that such sale declined by reason of the claimed discrimination by Standard, then you must determine the amount of damages suffered by the plaintiff, et cetera. As I say, it is our position that the instruction should be limited to sales of gasoline. There is no evidence of any discrimination in the sale of other petroleum products and the words "related products" was not defined and includes products as to which no discrimination has been claimed or proved, and [6451] as to which there has been no evidence in this lawsuit. Further, a decline in sales is not a proper measure of damages but only a loss of net profits which would have been earned but for the proven price discrimination are recoverable. And these net profits are a proper measure of damages only if the net profits were lost by virtue of a diversion of customers of plaintiff to the favored purchaser of Standard or their customers.

We would also take exception to the—well, then I think properly so here—to the use of the phrase "so-called claim period." Plaintiff has claimed in this lawsuit a claim period at times extending from March of '55 up through August of '58, and the defendants have insisted that the



proper period is cut off in the 2nd of December or the end of November of 1957.

Now, with respect to Plaintiff's Requested Instruction No. 40, which was given by the Court, which reads—it is for you, the jury, based on the books and records of plaintiff, Clyde Perkins, Perkins Oil Company of Oregon and Perkins Oil Company of Washington and the expert testimony to determine loss of potential profits suffered by the parties." We submit that the jury must determine the proper amount of loss, not on the books and records of plaintiff and Perkins Oil Company of Washington and Perkins Oil Company of Oregon and expert testimony, but upon all of the [6452] relevant evidence in the record. So far as the phrase "expert testimony" is used, we would except to the implication that the testimony of Dr. Mund may be used by the jury to determine loss of profits or potential profits. Dr. Mund's testimony did not extend to plaintiff's business nor to the area in which he claims to have marketed. I think we all recall that those figures that he put on the easel and insisted that this particular example without any reference to injury to competition, without any reference to any of the elements of causation, insisted that inevitably where there is a discrimination inevitably there will be this resulting damage to the business of the person discriminated against and without any connection to this case.

We would also object to the use of the words "potential profits" as opposed to reasonably expected net profits from sales lost by reason of discrimination, and we submit that potential profits are not in and of itself a proper measure of damages. The instruction improperly assumes that Clyde A. Perkins and Perkins Oil Company of Washington and Perkins Oil Company of Oregon were no longer able to continue in business as a result of the acts of Standard and there is no evidence which would support this assumption.

There is no evidence further that Clyde Perkins operated any business of his own which could have been injured by any price or [6453] other discrimination by Standard, and we find in the instruction the implication that there was.

Nor is there any evidence that going concern value or good-will value of Perkins of Oregon or Perkins of Washington, if any they had, declined as a result of any violation by Standard under the Robinson-Patman Act and further that the use of the phrase "among other things" is so indefinite as to leave the jury with respect to this instruction without appropriate and proper guidance.

I think that about finishes our exceptions for the record, Your Honor.

The Court: Let the record show your exceptions.

Mr. Mac Laury: Thank you, Your Honor. Let the record show it is 11:00 P. M.

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**XI. MISCELLANEOUS**

**A. Memorandum by Roger Tilbury, Esq.**

[1054]\* (Filed Sep. 12, 1963)

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Attorney for Plaintiff, Clyde Perkins.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF OREGON

Civil No. 369-59

CLYDE PERKINS, *Plaintiff*,

v.

STANDARD OIL COMPANY OF CALIFORNIA, a corporation;  
HARRIS OIL COMPANY, a corporation; HARRIS DISTRIBUTING COMPANY, a corporation; and LEE POWELL,  
*Defendants.*

**Memorandum of Authority in Support of Plaintiff's  
Supplemental Contentions**

*To The Honorable William G. East, United States District  
Judge:*

In response to the memoranda order of this Court dated August 13, 1963, which directed that plaintiff lodge his supplemental contentions of fact and a memoranda in support thereof, plaintiff respectfully submits the following memoranda:

The basic question presented by the supplemental contentions seems to be as follows:

Can a recovery be obtained for the losses of Perkins Oil Company of Oregon and Perkins Oil Company of Washington, Inc. as the result of price discriminations extended

\* Page references in Section XI are to the Clerk's transcript of record in the Court of Appeals.

by Standard Oil Company in favor of Signal Oil & Gas Company and others and against their supplier, Clyde Perkins, even though they did not make purchases direct from the defendant Standard Oil Company?

[1055] CONCLUSION:

Yes.

DISCUSSION:

The right to sue is governed by Section 4 of the Clayton Act<sup>1</sup> (15 USC Sec. 15), which provides as follows:

"That any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

There is no requirement of privity. It will also be noted that Section 2 of the Robinson-Patman Act (15 USC Sec. 13) provides:

"That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or *indirectly*, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the bene-

fit of such discrimination, *or with customers of either of either of them: \* \* \*.*" (Italics supplied).

It will be noted that the Act extends to customers of any purchaser as well as purchasers themselves, and includes indirect as well as direct forms of discrimination.

Representative Patman in his recent book (Complete Guide to the Robinson-Patman Act, 1963, Page 32) states:

"The word 'purchaser' within the meaning of the [1056] Robinson-Patman Act is not limited in its application to buyers of his product who buy direct from the seller charged with discrimination. The Federal Trade Commission defines the word 'purchaser' as it appears in subsection 2(a) in the following manner: "A retailer who purchases respondent's goods from jobbers and wholesalers is considered by the Commission to be a "purchaser" within the meaning of the Robinson-Patman Act, as well as retailers buying direct.' "

A recent article in 70 Yale LJ 469, 479 concludes that:

"Treble damage recovery is not limited to those in privity."

This rule has been accepted by virtually all of the adjudicated cases.<sup>3</sup>

It should be noted also in passing that if this were a true consignment, as defendant contends, then The Perkins Oil Corporations would be direct customers of Standard since Clyde Perkins would be defendant's agent.<sup>3</sup> If this were the case, then it would be unnecessary to consider the question of privity because, as stated by Representative Patman, under such "agency relationship, all the customers of the wholesale-agent are, in fact, customers of the manufacturer" (Complete Guide to Robinson-Patman Act, 1963, Page 18).

There is also no question that a corporation can recover for its losses as well as an individual and this is expressly



provided in Section 1 of the Clayton Act (15 USC Sec. 12).<sup>4</sup>

It is also unquestioned that the Clayton and Robinson-Patman Acts presently encompass an injury irrespective of the level at which it occurs (primary, secondary or tertiary)<sup>5</sup> (See also our letter to Your Honor dated June 18, 1963).

Of course, we again reiterate the position which we have maintained from the inception of this action, namely, that [1057] Clyde Perkins sustained the total damage in this case, in any event, since he was the only individual who made purchases from the defendant Standard Oil Company. However, we recognize that the Perkins Oil Companies, as purchasers, also sustained damages which overlap to some degree since the products were in many instances sold in stations which they leased from the plaintiff, Clyde Perkins, and from others. However, to the extent they overlap, the point we submit is moot because they have executed assignments of all of their interests to Mr. Clyde Perkins prior to the filing of this action. As discussed in the prior brief, the authorities agree that an assignment can be made of an antitrust claim and in that event the assignee is the proper party to bring the action.<sup>6</sup> Such an assignment was unnecessary in any event, since Mr. Perkins was the only proper party, but to avoid a technical problem of this nature, an assignment was executed.

Respectfully submitted,

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[1058]

<sup>1</sup> 70 Harvard LR 387, 537.

<sup>2</sup> *Elizabeth Arden v. FTC*, CA 2, 156 F2d 132, 135; *Roseland v. Phister*, OCA 7, 125 F2d 417; *American News Co. v. FTC*, CA 2, 300 F2d 104; *Sidney Klein v. Sales Builders*, ND Ill., 50-1, TC 62, 600; *McWhirter v. Monroe Calculating Machines Co.*, DO Mo., 76 FS 456; *Krug v. International Tel. and Tel. Corp.*, 142 FS 230 NJ; This is especially true if the manufacturer controls the intermediate. *Kraft-Phoenix Corp.*, 25 FTC 537; *Lusor*, 31 FTC 656, 40 Cal. LR 526, 540.

<sup>3</sup> Patman Complete Guide to Robinson-Patman Act, Page 18; Rowe, Price Discrimination Under the Robinson-Patman Act, Page 52.

<sup>4</sup> See also 15 USC Sec. 26 (Injunction). OCH, Trade Regulation Reporter, Sec. 9034.

<sup>5</sup> 15 USC, Sec. 13; *Van Camp v. American Can Co.*, 278 US 245; Patman Complete Guide to Robinson-Patman Act 1963, Page 49; Goldstein, Trial Lawyer's Guide, page 457; Senate Report No. 1502, 74th Congress, Second Session 4; H.R. Rep. No. 2287, 74th Congress, 2nd Session 8, 1936; 80 Congressional Record 3113 (Remarks by Senator Logan); 80 Congressional Record 9417 (Remarks by Congressman Utterback); 4 Vanderbilt LR 221, 239; 60 Harvard LR 571, 581; 46 Michigan LR 450, 459, et seq.

<sup>6</sup> *American Co-op Serum Association v. Anchor Serum*, 153 F2d 907, OCA 7; *Kentucky, Tennessee L & P v. Nashville*, 37 FS 728, Ky.; *Momand v. 20th Century Fox*, 37 FS 649, Okla.; Moore's Federal Practice, Vol. 1A, 3732; 7 Antitrust Bulletin 3.

### B. Excerpts From Transcript of Proceedings

[1480] the document bears a title assignment, is that right, does it have some title?

The Witness: It does not have a title.

The Court: Say it is a document and tell who it is signed by.

The Witness: This is a document and it is signed by myself as secretary of Perkins Oil Company of Washington.

The Court: Very well.

Q. (By Mr. Tilbury) Look at 17-B, please.

The Court: Is there a date on it?

The Witness: No, there is no date on either document.

The Court: Very well.

The Witness: And the 17-B is another document signed by myself, as secretary of the Perkins Oil Company of Oregon.

Q. (By Mr. Tilbury) How about 17-C?

The Clerk: 17.

The Witness: There is no C. No. 17, this is a document that is signed by Mr. Lennington and myself and also by myself as a partner of the partnership that Mr. Lennington and I owned at that time.

Q. (By Mr. Tilbury) All right. When did you sign this, do you recall? A. Well, I signed this, I know when, but I couldn't pinpoint the date. The only reason I could tell you when is because it was signed just prior or presumably prior to [1481] filing the—

Mr. Hilliard: (Interposing) Your Honor, I object to any presumptions of when this was signed. The witness can either answer when it was signed or he does not know when it was signed. He is not entitled to make presumptions.

The Court: He may finish his answer.

The Witness: I know when it was signed in relation to one other act, Mr. Hilliard.

The Court: You may finish your answer.

The Witness: It was signed just prior to the filing, or what I thought was the filing date of the Standard Oil case.

Mr. Hilliard: May I ask, there are three Standard Oil cases filed by this Clyde Perkins. If he is referring to one of those, I would like it specified.

The Court: You may.

The Witness: My knowledge at that time there was just one Standard Oil case and I didn't know it was going to become three cases at that time.

Mr. Hilliard: May we ask the witness to specify which case he is talking about?

The Court: He just said he understood there was one.

Q. (By Mr. Tilbury) Had anything been filed, if you recall? A. To my knowledge nothing had been filed at that time.

[1485] Mr. Tilbury: I wonder if the witness could be shown Exhibit 17, and perhaps he has it already; and I think we have this labeled as A, B, and C. Oh, 17. Well, excuse me just a minute. I think this 17 seems to be the one.

Q. (By Mr. Tilbury) Mr. Lennington, this is a photo-static copy, and I believe that we can agree that this was introduced as an original in the other case? A. Yes.

Q. Do you recall seeing a document like that or signing a document like that? A. Yes, this is my signature.

Mr. Hilliard: May we have the number of the document?

Q. (By Mr. Tilbury) Yes, would you identify the number? A. This is Exhibit 17, Case 369-59.

Q. What sort of document is it?

Mr. Hilliard: Well, if the Court please, I move to strike that, your Honor, as a conclusion of the witness.

Mr. Tilbury: Well, it is an assignment.

The Court: It is not meaningful unless he can identify it I think to the jury. As long as the jury understands that that is just a title that he is given for identification.

Mr. Tilbury: Yes, I would certainly agree that that is all it is.

Q. (By Mr. Tilbury) Do you recall, Mr. Lennington, this [1486] document that you refer to, when that was signed? A. Well, not exactly. I would say probably in the late '58 or early '59.

Mr. Hilliard: Your Honor, I would move to strike the speculation of the witness. If he does not know—

Mr. Tilbury: Maybe I could ask another question.

Mr. Hilliard: Is the motion granted?

The Court: No, he wants to clarify it.

Q. (By Mr. Tilbury) Could you identify it in terms of the filing of this lawsuit or any other lawsuit or anything else that might help pinpoint the time? A. I had certainly signed this prior to the filing of the lawsuit.

Mr. Hilliard: I move, your Honor, to strike the answer.

The Court: It will be denied.

Q. (By Mr. Tilbury) Mr. Lennington, as I understand it, trucking was another area that you were watching more or less when you were with the Perkins Company? A. That is true.

[1509] Mr. Hilliard: May I ask then that counsel's answer is "Yes," you did supply Mrs. Ross with the language for document 17? \*

Mr. Tilbury: As I recall the circumstances, I suggested that we have this because you were trying to raise a point because of their absence even though you objected to my bringing them in, and I suggested that they follow the language that had been used in the earlier assignment. I don't think I gave her the specific language. I compared them recently, but I think you will find the language is very similar to 17A and 17B.

The Court: I don't think you had better ask another question.

Q. (By Mr. Hilliard) Now, let me ask this, now, counsel has made a statement here which I would like to pursue with you, Mrs. Ross; he said that he had you type this



17 because I had taken a position about the interest of these parties; now, if I tell you that the record shows that the first time I raised the question about these parties was in the deposition of Mr. Clyde Perkins on May the 2nd, 1962, and for the next succeeding four days thereafter, would that refresh [1510] your memory that document No. 17 was typed after May the 2nd, 1962?

Mr. Tilbury: Well, I think the record should also show that Mr. Hilliard came in this case late.

The Court: You may take the witness on direct. This is cross-examination. Do not interrupt counsel.

Mr. Tilbury: Well, Your Honor—

The Court: Do not interrupt counsel.

Q. (By Mr. Hilliard) Does that refresh your memory on the date that you typed Exhibit 17 under the direction of Mr. Tilbury? A. Mr. Hilliard, that couldn't possibly refresh my memory. I know nothing about Mr. Perkins' deposition. I know nothing about that particular portion of it. I wasn't present when he give a deposition.

Q. Do you remember the date that the Northwest Petro Chemical Company, the name of the chemical company this Selectromatic typewriter was ordered for; now, was your memory refreshed that it was at least eight months after that date, the date the document, 17, was typed by you? A. Will you say that again?

Q. Now, after knowing the date this typewriter was purchased, do you now recall that it was eight months after that date before Exhibit No. 17 was typed? A. After what date?

. . . . .

C. Letter From Roger Tilbury, Esq. to the Hon. William G. East

[1717]

ROGER TILBURY

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June 18, 1963

Hon. William G. East  
U.S. District Judge  
U.S. Court House  
Portland, Oregon

Re: Perkins v. Standard Oil 369-59  
Defendant's PROPOSED PRETRIAL  
ORDER No. 1(c)

Dear Judge East:

Defendant seeks to exclude all evidence of prices charged to other accounts by defendant except sales to other jobbers as it defines that term on the mistaken premise that plaintiff's activities in the petroleum business were confined to jobber sales.

Such is not the case. Clyde Perkins so testified during the trial of 331-59 and at his deposition. Defendant predicates this assumption upon the answer to interrogatory 2 where plaintiff stated he did not sell products "direct to the retail trade." This statement is true because his method of operation was to lease his stations to an independent operator on a gallonage basis. There was one exception in the Vancouver, Washington, area where he hired a company operator. We will amend our answer to show this one exception. However in the usual situation the stations were leased to independent operators on a gallonage basis. Mr. Perkins was affected in these situations by the practices of Chevron stations in the vicinity since his rent was tied to the number of gallons

which were sold in his stations. Defendant's interrogatory # 2 asked the plaintiff to list "each retail customer of plaintiff." Since these sales were sales by the independent lessees they could not be regarded as sales by Clyde Perkins. Probably by the same token defendant does not regard sales by Chevron stations (where the operators are allegedly independents) in the same fashion it regards sales by Standard Stations, Inc., where the employees are company men. We have never limited our claim for damages to the jobber sales category, which fact is well known to defendant. For example in the interrogatory which preceded this interrogatory (#1) defendant ask us to list the names of the recipients of defendant's discriminatory pricing practices. Our answer specifically lists Chevron as one of these recipients. These answers have been filed for almost four years. During the marathon deposition of Clyde Perkins taken by defendant's counsel, which must have shattered all records in this state, many questions were asked concerning this charge.

There is no mystery regarding our charge of discrimination in favor of Chevron dealers. It has always been known to defendant's counsel.

[1718] The basic question seems to be as follows:

Is the price discrimination law violated if a retailer acquires his products from the manufacturer at a lesser rate than a jobber, who is also engaged in the retail business as an owner and lessor, where such retailer and jobber resell the products obtained from the manufacturer to the identical consuming public, assuming the other elements mentioned in the Act are present?

In light of its history and judicial interpretation the question can only be answered in the affirmative.

One of the primary purposes of the Act was to forbid large retailers from acquiring their products from the

same manufacturer or supplier at lower rates than wholesalers or jobbers. These retailers were in many instances able to pass along a part of the saving to the public and thereby undersell these retailer who acquired their products through wholesalers or jobbers. Congress was particularly troubled by the growth of these large direct purchasing retailers, who in the eyes of Congress threatened the independent merchant with extinction. (79 Cong. Rec. 11575, 6; 80 Cong. Rec. 3117; Report of the Federal Trade Commission, page 36; Hearings Before the House Committee on the Judiciary on Bills to Amend the Clayton Act, 74 Cg., 1st Sess 5-6, 1935; Hearings Before the Anti-Trust Subcommittee of the House Committee on the Judiciary on Bills to Amend Section 2 & 3 of the Clayton Act, 84th Cong., 2d Sess 57, 1956). So strong was this feeling that the Act itself is sometimes referred to as the Anti-Chain Store Act. Congress took violent exception to the practice of large retailers who used the economic power of their organization to wrangle additional allowances not available to wholesalers or jobbers.

It is expressly provided, and universally acknowledged, that the Act is violated if the adverse competitive effects involve either the line of commerce in which the seller is engaged, the line of commerce in which his customers are engaged, or the line of commerce in which customers of the favored purchasers are engaged (the so-called primary, secondary, or tertiary line of competition). (15 USC # 13; Complete Guide to the Robinson-Patman Act by Wright Patman, p. 49, 1963). In this case both secondary and tertiary lines were affected.

The Act makes it:

“unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality,

where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: . . . .” (15 USC 13a).

The Act applies to the case where a wholesaler who acquires his products is obliged to pay more for the same products than a retailer. For example in *Krug v. International Tel & Tel Co.*, 142 FS 230, NJ, [1719] a wholesaler was required to pay more for his products than a retailer who purchased directly from the same supplier. The Act was violated. (See Chart A). This is the situation in this case where Mr. Perkins was charged more for the same products than Chevron dealers who acquired their products direct from Standard. Mr. Perkins was in direct competition with Chevron Stations in those situations where he owned the retail stations. Where he resold the products to retailers, as he did in some instances, these retailers were also in direct competition with Chevron Stations. The Act by its terms applies to either direct or indirect discrimination. As in *Krug* the products were being resold to the same group of ultimate purchasers, the consuming public (See Chart B).

In *FTC v. Morton Salt*, 334 U.S. 37, the High Court struck down the Morton price schedule because while theoretically the discounts were available to all, practically they were not, and in fact only a few large retailers were



in a position to take advantage of them. The court commented that probably no "single wholesaler" was able to utilize them. It is unlawful to charge a lower price to retailers (if it is not covered by one of the exceptions) than to wholesalers if competition is affected.

Frederick Rowe in his recent book ("Price Discrimination under the Robinson-Patman Act, 1962) (1c 175) states:

"A typical price discrimination detrimental to competition arises from lower prices granted to large retailers than to wholesalers or jobbers. For in such a case, the retailer paying the preferential price can resell to consumers at lower prices than those retailers who pay more to the wholesalers which are charged a higher price by the supplier. Hence the forbidden statutory "injury" to competition with the recipient of the discriminatory lower price-the retailer paying less-may readily come to pass on the retailer level."

This case is altogether different from the Secatore case (Secatore's Inc. v. Esso Standard Oil Co., 171 FS 665, Mass) where the manufacturer sold to a retailer at a higher rate than Esso sold to certain industrial or commercial users. These last companies were strictly consumers. None of them sold a drop of gasoline acquired from defendant. Instead they used the products for their own equipment. In short they did not compete with plaintiff, the retailer, in any way. There was no competition, directly or indirectly, between plaintiff and the recipient of the discriminatory price. The plaintiff was a retailer who sold the gasoline to automobile owners who came to his station. He had no facilities for delivering or selling off the premises. Thus he couldn't reach the consumers to whom defendant made sales anyway. (See Chart C).

In the Perkins case the Chevron stations sold the identical products to the identical group of consumers. Competition was direct and intense.

Respectfully submitted,

ROGER TILBURY  
Roger Tilbury

cc: Koerner, Young, etc.

RGT: ab